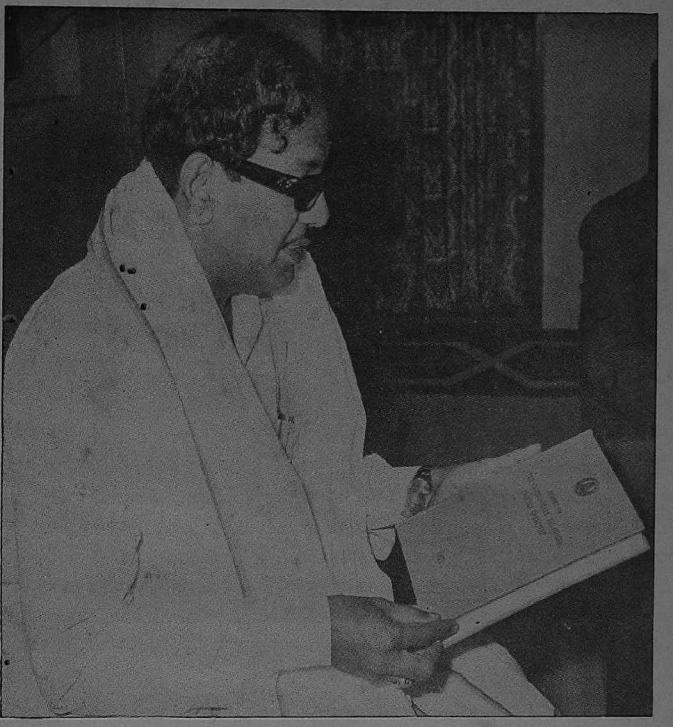
REPORT OF
THE CENTRE-STATE RELATIONS
INQUIRY COMMITTEE

1971

REPORT OF THE CENTRE-STATE RELATIONS INQUIRY COMMITTEE

1971

PRINTED BY THE DIRECTOR OF STATIONERY AND PRINTING, MADRAS, ON BEHALF OF THE GOVERNMENT OF TAMIL NADU
1971



TRIBUTE

It was on March 17, 1969 that Thiru M. Karunanidhi, during his first visit to New Delhi as Chief Minister of the Government of Tamil Nadu in the course of answering searching questions on a wide range of subjects put to him by over fifty newsmen representing newspapers from all over the country, said that his Government was considering the setting up of an expert committee to go into the question of Centre-State relations and recommend the powers that should be transferred from the Centre to the States. He indicated that the committee would include legal and constitutional experts and eminent educationists.

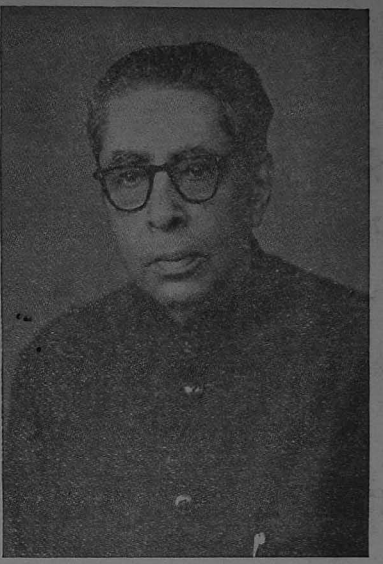
He further said that the Centre should not construe such transfer as surrender of their powers, but must be happy that their burden would be lessened.

Subsequently, he announced on the floor of the Legislative Assembly on August 19, 1969 *the formation of a three-member committee with myself as Chairman and Dr. A. Lakshmanaswami Mudaliar and Thiru P. Chandra Reddy as members and said that the committee would consider in what manner the powers of the States should be increased to ensure them complete autonomy. He further said that not only the D.M.K. but other opposition parties also were agreed on the need for giving States more powers. In fact, some of the Congress Chief Ministers too wanted greater autonomy for States.*

This decision of the popular Chief Minister to constitute the committee, first of its kind in India, bears testimony to his sagacious statesmanship, dynamic approach to national problems and far-seeing vision. With a magnetic personality he has carved for himself an abiding place in the hearts of millions. His signal contribution to the ushering in of a real and everlasting federal set up in this great country of ours will no doubt be a landmark in its history.

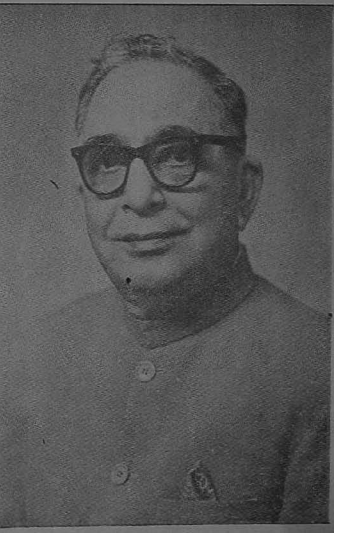
MADRAS,
27*th May* 1971.

P.G. Rajamannar



Dr. P. V. RAJAMANNAR

Dr. A. L. MUDALIAR



Thiru P. CHANDRA REDDY

CHAIRMAN :

DR. P. V. RAJAMANNAR, D.Litt., LL.D.

MEMBERS :

DR. A. LAKSHMANASWAMI MUDALIAR, M.D., LL.D., D.SC., D.C.L., D.Litt., F.R.C.O.G., F.A.C.S.

THIRU P. CHANDRA REDDY, B.A., B.L.

OFFICERS AND STAFF :

Secretary—

Thiru V. A. Venkatachalapathy

Assistant Secretary—

Thiru S. Gajendran

Personal Secretary to the Chairman—

Thiru N. K. Ramaswami

Assistants—

Thiru S. P. Jagannadham (up to 21st April 1970)

Thiru S. Saravanavelu

Thiru C. T. Balasubramanian (from 2nd May 1970)

Thiru M. Bauliah

Steno-Typist (Confidential)—

Thiru S. Raghunathan

Steno-Typist—

Thiru T. S. Shanmugavelu (up to 4th December 1969)

Typist (Tamil)—

Thiru P. Balaraman

CONTENTS.

APPENDICES.

Note.—The letters "CAD", wherever they occur, refer to Constituent Assembly Debates.

PREFACE.

We must thank the Government of Tamil Nadu for entrusting us with the important task of inquiring into the relations between the Centre and the States and making recommendations for improving them.

In making a study of the several aspects of Centre-State relations according to the provisions of the Constitution, it was not our intention—nor our approach—to criticise the talented and experienced statesmen, politicians and jurists who were responsible for the Constitution as it was finalised after prolonged deliberation. It must not be overlooked that the Members of the Constituent Assembly were not as free as the framers of the American Constitution to confine the provisions of the Constitution to the declaration of a few general principles, fundamental to a federal structure. They had before them the enactment of the British Parliament, the Government of India Act, 1935, which was in force immediately before. It was not easy for them—nor expedient—to entirely disregard and discard its elaborate provisions for the government of the country and to start with a clean slate.

Contemporaneous with independence came the partition of the country and that presented problems, existing as well as future. There was a lurking apprehension of attempts at disruption of the integrity of the country. There was also the fear of external aggression. Some of the provisions of the Constitution reveal an anxiety to provide for such anticipatory dangers.

Two decades have elapsed since the Constitution came into force and the time has come to review its provisions in the light of the experience gained and

events which have happened like the reorganisation of States on a linguistic basis and the emergence into power of different parties in several States.

Another important circumstance which has affected Centre-State relations is the creation by an executive order of the Central Government of the Planning Commission which was not evidently contemplated at the time of the drafting of the Constitution and which has thrown into background the Finance Commission for which express provision was made in the Constitution. The impact of the Planning Commission on Centre-State relations is of much consequence and requires a thorough examination.

The Committee had to deal with several topics relating to Centre-State relations with due regard to the above among other relevant factors.

In making our recommendations, we have not disturbed the essential frame work of the Constitution ; nor have we jeopardised the integrity of the country. Our aim was not to destroy the present Constitution and frame another in its stead. Our intention was not to " grasp this sorry scheme of things " and " to shatter it to bits and then remould it nearer to the heart's desire ".

It is true—and it is obvious—that the general trend of our recommendations is in favour of autonomy of the States, autonomy consistent with the integrity of the country. We believe that if our recommendations are accepted and implemented, our Constitution will provide for an ideal federal system of government.

We have received much assistance from the answers to the Questionnaire and the views of eminent

public men and jurists like Sir A. Ramaswami Mudaliar, Thiru N. A. Palkhivala, Thiru K. Santhanam, Thiru M. Bhaktavatsalam, Dr. A. Krishnaswami, Thiru M. P. Sivagnana Gramani and others who were kind enough to meet us personally.

Our thanks are due to the Secretary, the Assistant Secretary and the staff of the Committee for the help rendered to us. The notes prepared by the Secretary after extensive study and research contained all material data for our consideration.

CHAPTER I.

INTRODUCTORY.

This Committee was constituted by the Government of Tamil Nadu by G.O. Ms. No. 1741, Public (Political), dated the 22nd September 1969. The Government Order is reproduced below :—

"In pursuance of the announcement of the Chief Minister on the floor of the Legislative Assembly on the 19th August 1969, the Government hereby constitute a Committee consisting of the following persons to examine the entire question regarding the relationship that should subsist between the Centre and the States in a federal set up, with reference to the provisions of the Constitution of India, and to suggest suitable amendments to the Constitution so as to secure to the States the utmost autonomy.

(1) Dr. P. V. Rajamannar .. .. *Chairman.*

(2) Dr. A. Lakshmanaswami Mudaliar } *Members.*

(3) Thiru P. Chandra Reddy .. }

2. Orders regarding the detailed terms of reference to the Committee will be issued in due course."

The terms of reference to the Committee were announced in G.O. Ms. No. 2836, Public (Political), dated the 15th November 1969, which runs as follows :—

"In the G.O. read above constituting the Committee to inquire into Centre-State relations, it was stated that orders regarding the detailed terms of reference to the Committee would be issued in due course. As indicated in that G.O., the Committee has to consider the entire question regarding the relationship that should subsist between the Centre and the States in a federal set up. The Committee is requested to examine the existing provisions of the Constitution and to suggest the measures necessary for augmenting the resources of the State and for securing the utmost autonomy of the State in the executive, legislative and judicial branches including the High Court, without prejudice to the integrity of the country as a whole."

The Committee issued a Questionnaire with a view to obtaining the views of persons who are interested in, and have made a study of, the subject. The Questionnaire is set out in Appendix I. The Questionnaire was widely circulated and copies of the same were sent to retired Judges of the Supreme Court, ex-Chairmen of Finance Commissions and eminent jurists and other leaders of public opinion and Members of the State Legislature and of Parliament representing the State—*See* Appendix II. Tamil translation of the Questionnaire was also made available.

2. Having regard to the terms of Reference, the Committee took up the following topics for consideration with reference to the provisions of the Constitution, relevant factors, events and circumstances bearing on those topics, keeping before it the main objective, viz., to secure for the States fullest extent of autonomy within the general framework of the Constitution, without in any way impairing the integrity of the country :

(i) The Federal system set up by the Constitution ;

(ii) Unitary trends in the Constitution and its working —reasons for such trends ;

(iii) Provisions of the Constitution affecting the State autonomy in administrative and executive fields ;

(iv) Distribution of legislative powers contained in Lists I, II and III (Union, State and Concurrent) in the Seventh Schedule to the Constitution ;

(v) Legislative powers conferred on Parliament (Centre) inconsistent with State autonomy ;

(vi) Division of taxing powers as between the Union and the States ;

(vii) Distribution of revenues as provided in the Constitution;

(viii) Statutory grants from the Centre to the States ;

(ix) Discretionary grants from the Centre to the States ;

(x) Finance Commission ;

(xi) Loans from the Centre to the States (indebtedness of the States to the Centre) ;

(xii) Central Planning and Planning Commission ;

(xiii) Supreme Court and High Courts ;

(xiv) Role of the Governor—extent of, and limitation on, his powers;

(xv) Emergency Provisions—

(*a*) Articles 356 and 357;

(*b*) Articles 352, 353 and 354;

(*c*) Article 360;

(xvi) Public Services;

(xvii) Territorial integrity of States;

(xviii) Representation of States in (*a*) Rajya Sabha and (*b*) Lok Sabha;

(xix) Language Question;

(xx) Provisions relating to Trade and Commerce, intra-State and inter-State;

(xxi) Deployment of Central Reserve Police Force in States;

(xxii) Elections;

(xxiii) Inter-State Water Disputes;

(xxiv) Sea-bed;

(xxv) Union Executive;

(xxvi) Amendment of the Constitution.

3. Besides the study of the provisions of the Constitution and decisions of Courts bearing on them, the Committee considered the replies received in response to the Questionnaire, evidence given before them by eminent men and senior Government officials, opinions expressed by jurists and statesmen in books and articles in the Press and in journals and the relevant provisions of other Constitutions of the world likely to throw light on the questions arising on the Reference to the Committee.

4. The Committee has examined the several conflicts which have arisen and are likely to arise between the Centre and the States in several fields, Administrative, Executive, Legislative, Judicial, Economic, etc., and has sought to arrive at conclusions regarding the relations that should subsist between the Centre and the States. In accordance with such conclusions, the Committee has made recommendations, some of them involving amendments to certain provisions of the Constitution by way of deletion, addition or alteration; others for evolving conventions (though not statutory)

but which are of binding force, including laying down of guidelines to ensure harmonious relations between the Centre and the States and to safeguard the autonomy of the States without jeopardising national integrity.

5. Though the problem of Centre-State relations has acquired vital dimensions and new importance in recent times due to different political parties being in power at the Centre and in the States, there have, however, been demands for adequate safeguards necessary for ensuring proper and harmonious relations between the Centre and the States inasmuch as the provisions of the Constitution governing Centre-State relations were found inadequate for the purpose of meeting situations or resolving problems arising in this field. Soon after the Constitution began to work, there was a growing realisation of the strong domination of the Centre not only on general policies but also in the spheres which exclusively belonged to the States and of the tendency on the part of the Centre to exercise control over the States, drastically affecting the autonomy of the States. Strong feelings have been voiced against the attitude of the Centre in curtailing the powers of taxation enjoyed by the States before the introduction of the Constitution and the manner in which the Centre has been interfering with the affairs of the States ever since. But these issues were prevented from flaring up into serious conflicts between the Centre and the State Governments because the Centre and the State Governments were controlled by one and the same party.*

6. Eminent jurists and students of politics, with no political bias, have also adverted to this fact.

Thiru Asok Chanda, retired Comptroller and Auditor-General of India and Chairman, Third Finance Commission, in his book *Federalism in India* has observed :

" One-party government both at the Centre and the states has facilitated and even encouraged Parliament to consider itself as the apex of a legislative and executive pyramid. The Prime Minister and other ministers have not hesitated to take an indirect and some times even a direct hand in settling and deciding issues which are constitutionally the responsibility of the states. The limited sovereignty of the states is thus being surrendered by usage and

* A similar view has been expressed by Thiru Bhabatosh Datta in his article captioned " Need for re-examination of Centre-State financial relations " published in the Supplement to *Capital*, dated the 31st December 1970.

sufferance and it would be difficult for a state later to reassert or regain its constitutional authority. It may be claimed that the 'advice' tendered by the Union ministers is in their capacity as members of the Congress high command and that there has thus been no infraction of the sovereignty of the states. This sophistry will hardly delude many." (Page 132)

The Mail, in its editorial, dated the 23rd April 1967, states :

" .....But it is equally important to remember that the difficulties that may arise in the relations between Centre and States had cast their shadows even when the Congress Party held sway over the whole country....."

Thiru C. V. H. Rao, writing in *The Hindu*, dated the 26th January 1967, under the caption, *Evolving Perspectives in Centre-State Relations*, writes :

" Many of the State Governments obviously consider that while the Constitution confers on them an autonomous status in a prescribed area of administrative and financial responsibility, this is being circumscribed, in practice, by the Centre assuming the initiative in the crucial spheres of finance and planning. In some measure, the States are also discontented about the restraints sought to be clamped on their initiative in what is purely their own responsibility, like maintenance of internal peace and law and order. There is next the problem of food policy and administration, in which the Centre's interference, unavoidable in the interests of the country as a whole, involves an erosion of the States' initiative.

Some of these issues have, over the last few years, erupted into prominence with different degrees of acuteness, but were prevented from flaring into serious conflicts because the Union and all the State Governments are manned by the Congress Party With the probable change in the complexion of at least some of the State Governments after the next election, the possibility of their assuming a more strident form cannot be ruled out."

Again, Thiru A. N. Sattanathan, in his article *The Federal Process at Work—Parleying from Strength* published in *The Mail*, dated the 27th September 1969, says :

" The acceptance of the Centre's authority even by Congress Ministries has not always been unquestioned . . .

. . . . . This pattern of settling Centre-State relations at the Congress High Command level, cannot possibly be extended to conditions now prevailing when non-Congress Ministries are in power in some of the States.

* * * * *

It was well-known that the previous Congress Government in Madras. . . . hesitated to press to the hilt some of their cases with the Centre if there was already a definite Congress or Central Government policy on the subject."

Thiru A'nal Ray, in his book *Inter-Governmental Relations in India*, has dealt with this point. He has this to say:

"Central control tends to create tension in relations between the Centre and the States. . . . no widespread Union-State conflict has ensued. This situation can be attributed to uni-party rule in both Centre and the States. . . ."

"The party resolutions which command the Congress governments in the States to pursue certain policies, are practically those which have been passed by the Working Committee, and obviously, they reflect the thinking of the central government. Hence, the norms for action by the Congress governments in the States are largely set by the Working Committee. The basic policies are evolved at the top of the Party organisation which are passed on to the State governments for elaboration and implementation

(Pages 127 and 128)

After analysing the centralising forces in operation in Indian federalism, he goes on to say:

"We have analysed the centralising forces in operation in Indian federalism. But these are challenged, although not continuously but intermittently, by certain decentralising forces which guarantee substantial State autonomy, and put a brake to the process of total integration which has been set in motion in India by the powerful 'Triple', i.e., national plan, massive grants and party. One such decentralising force is what K. C. Wheare calls, 'the self-consciousness and self-assertiveness of the regional governments' which is slowly but perceptibly increasing in India. It is true that owing to strong party pressure this awareness of autonomous status and existence remains frequently dormant, and cannot become as articulate and vocal as that of Western Australia or Quebec . . . ." (Page 129)

The proceedings of the Madras Legislature before the election in 1967 contain speeches in which Honourable Members have pointed out the unsatisfactory nature of Centre-State relations and protested against the dominating role of the Centre and the interference by the Centre even in exclusive State fields. (*Vide* Appendix III setting out extracts from speeches made by Dr. A. L. Mudaliar, Dr. V. K. John and others).

7. It will, therefore, be seen that the demand for more and fuller powers to the State and the need for amending the Constitution to the extent necessary is not a new phenomenon arising out of the change in the political complexion of the Tamil Nadu Government. The question had been simmering almost ever since the Constitution was on the anvil and it was left to the late Chief Minister of Tamil Nadu, Dr. C. N. Annadurai, to give it rather an official touch at the ministerial level soon after he assumed office as Chief Minister. While answering questions at the Press Club of India in New Delhi on the 8th April 1967, he emphasised the need for the setting up of a high powered Commission to examine the working of the Constitution for any necessary re-allocation of powers between the Centre and the States. He said that under the present Constitution, powers which strictly came under the States' sphere, were being slowly taken over by the Centre and pointed out that an ideal Centre was one which left sufficient powers to the States and kept just enough power to itself to protect the integrity and sovereignty of the country.

Excerpts from the speech made by him on the 27th June 1967 in reply to the general discussion on the Revised Budget for 1967–68 in the Madras Legislative Council are reproduced below :—

"... I would ask the Hon. Members of the House to bear in mind that there are three kinds of financial relationship of the State with the Centre. One is through the allocation of the taxes that they collect here, the second is the grant and the third is the plan fund allocation. If you deeply analyse the figures from 1950 to 1967, you will find that as the days roll on and on the first two items are losing their importance and the third item, namely, the plan allotment is gaining much ground or gaining much dominance. That does not come under the purview of the Finance Commission,

The Centre has got a whip in its hands in the nature of grants, because the grants are given by the Centre at its discretion. The Plan allocation is left entirely—if you will permit me, I will say entirely—to the whims and fancies of those who call themselves Members of the Planning Body. If a large amount of money, which is needed for the reconstruction of our country, is to be left to the whims and fancies of another body, which does not come under the control of any authoritative body, then I think there is every urgent necessity for a re-allocation of all these things, and the financial relationship, as far as the plan amount is concerned, is to be reviewed and reviewed urgently so that we may not be—I do not know what other word I can use ; uppermost to my mind only this word comes, though it may be awkward—and we should not be robbed of what is our due. . . . the relationship between the State and the Centre should be reviewed. Unfortunately, the Prime Minister of India has brushed aside that suggestion in one of the replies she has given on the floor of Parliament. She has stated that no Commission is necessary. If by this the Prime Minister means that she is posted with all facts and would render justice, I welcome that statement. But if the Prime Minister were to mean that there is no necessity for a Commission because there is no necessity for reviewing the position, then I beg to differ from the Prime Minister of India, and I would reiterate from this House that the time has come and come urgently too and with emphasis—none can minimise that the time has now come—when the State-Centre relationship should be reorganised on a more stable basis".

Earlier on the 17th June 1967 presenting the Budget to the Legislature, he observed *inter alia* :

" . . . There has been considerable change in the matrix of Centre-State financial relations since the provisions of the Constitution in this regard were settled. There have been a number of new trends and developments which could not have been visualised when the Indian Constitution was framed. The Constitution had already provided for considerable concentration of powers in the hands of the Central Government. Through a new institution which was beyond the ken of the architects of the Constitution, the Centre has acquired still larger powers causing concern about the position of the States.

This new development relates to economic planning. The powers which the Central Government have assumed in regard to mobilisation, allocation and pattern of utilisation of resources for the Plan have reduced the States to the status of suppliants for aid from Centre. Though some may shrink from discussing this issue on account of party discipline, all those who have looked at this problem from the purely economic angle, have expressed regret at these trends in financial relationship between Centre and State. . .

* * * *

Many Chiefs of State Governments have recognised that State Governments cannot discharge their responsibilities in meeting the growing aspirations of the people for a new way of life, unless the resource base of the States is considerably strengthened by giving them access to growing sources of revenue and by allocating the Plan resources on an agreed basis leaving the States with complete freedom to utilise them according to their judgment.

The House is aware that these leaders have also like me referred to the need for rethinking on the relations between the Centre and the States. I have no doubt that every one will agree on the need for placing these relations on a satisfactory basis. No one can deny that the experience so far in regard to distribution of revenues, delimitation of powers and allocation of assistance for plan has been such as to cause bitterness. It has become an urgent necessity to eliminate this bitterness and evolve ways and means of promoting fruitful relations between Centre and States. The problem I have posed need cause no apprehension or misgiving but should only provoke thought. It is my earnest desire that through mutual goodwill and understanding we should forge a fraternal and beneficial nexus."

As recently as November 1970 the Chief Minister of Mysore, Thiru Veerendra Patil, has deplored the general deterioration in Centre-State relations and has gone even to the extent of giving a warning that a day might come when different Houses and Bhavans of States in New Delhi are constrained to assume the character of embassies. He has stated that it is a stark reality that the problem of Centre-State relations is already assuming serious proportions. (*Vide The Mail*, dated the 29th November 1970)

CHAPTER II.

FEDERAL SET UP.

The first question which falls to be determined is what is the system of government introduced by the Constitution which came into force on the 26th January 1950. In dealing with this question, it is important to begin with a reference to the historical objectives-resolution of Pandit Jawaharlal Nehru, which was adopted by the Constituent Assembly on the 22nd January 1947, the material part of which runs as follows :

"Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States, as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

"Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom ; and

"Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people."

There was an important departure from this Resolution in the Draft Constitution published in February 1948. While the Resolution declared that the residuary powers would vest in the Units, i.e., the States, and the Union was to exercise enumerated powers, the draft proposed that the residuary powers should reside in the Union (except as regards the Indian States).

Article 1 of the Constitution declares that India, that is Bharat, shall be a Union of States. The word "Federation" occurs nowhere in the Constitution. There is, however, no particular significance to be attached to the word "Union". That word is

used in the Preamble to the Constitution of the United States, an ideal Federation and in the Preamble to the British North America Act, 1867. This was pointed out by Dr. B.R. Ambedkar, who said,—

"It will be noticed that the committee has used the term 'Union' instead of 'Federation'. Nothing much turns on the name, but the committee has preferred to follow the language of the preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its Constitution may be federal in structure."

* "Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage."

2. A federal union may be formed in either of two ways, having regard to the pre-existing conditions and political system. It may be formed by voluntary agreement between sovereign and independent States for the administration of certain affairs of general concern as in the case of the United States, or, it may be formed by the transformation of the provinces or units of a unitary state into a federal union as in the case of Canada. India, undoubtedly was a unitary state until 1937, when the Government of India Act, 1935, came into force. Till then, the Provincial Governments were virtually agents of the Central Government. But by the Act of 1935, the British Parliament set up a federal system in the same manner as it had done in the case of Canada, namely, "by creating autonomous units and combining them into a federation by one and the same Act". All powers till then exercised by the British Government in India were resumed by the Crown and redistributed between the federation and the provinces by a direct grant. The Provinces under the 1935 Act derived their authority directly from the Crown and exercised legislative and executive powers conferred on them by the Act. The system of government, according to the Constitution framed by the people of India, is in many respects similar to the type of federation set up by the 1935 Act.

* Page 43, CAD VII.

3. As eminent writers on Constitutional Law have pointed out, the essence of federalism does not lie in the historical process of formation of the union but in the actual government. When once the union is formed, the national and state governments have co-ordinate authority—each derives its authority from the same source, namely, the Constitution, neither being the delegate or agent of the other. Therefore, it follows that just as the Canadian Union is a federation, the Indian Union is likewise a federation. The States of the Indian Union are in no sense like the units of local administration in a unitary state. The object of our Constitution is similar to that of the British North America Act, 1867. The object of that Act was explained by Lord Watson in *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick* [1892 A.C. 437 at pp. 441–442] thus :—

"The object of the Act was neither to weld the provinces into one, nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy."

In an earlier case, *Hodge* v. *The Queen* [(1883) 9 App. Case 117 at p. 132], the Judicial Committee observed that the legislature of a province had exclusive authority to make laws for the province and for provincial purposes in relation to matters enumerated in section 92 of the British North America Act, 1867, and in the exercise of those powers, the legislature of the province was in no sense a delegate or the agent of the Imperial Parliament. It had authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area, the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion. After referring to this earlier case, Lord Watson in 1892 A.C. 437 at pp. 442–443 went on to say—

"It is clear, therefore, that the provincial legislature of New Brunswick does not occupy the subordinate position which was ascribed to it in the argument of the appellants. It derives no

authority from the Government of Canada, and its status is in no way analogous to that of a municipal institution, which is an authority constituted for purposes of local administration. It possesses powers, not of administration merely, but of legislation, in the strictest sense of that word; and, within the limits assigned by section 92 of the Act of 1867, these powers are exclusive and supreme."

Under our Constitution, the Legislatures of States have been given similar powers in respect of the subjects enumerated in List II in the Seventh Schedule and these provisions support the view that the Indian Constitution introduced a federal system of government.

4. According to Sir Robert Garran, "Federation is a form of Government in which sovereignty or political power is divided between the Central and State Governments so that each of them within its own sphere is independent of the other". Professor Wheare defines the federal principle thus:* "By the federal principle I mean the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent".

A federal State derives its very existence from the Constitution. Hence, any power, legislative, executive or judicial, whether it belongs to the Centre or to the individual States, is subordinate to and controlled by the Constitution (Dicey's *Law of the Constitution*).

Foreign jurists have characterised the nature of the Government set up by our Constitution in different ways. Professor Wheare has described it as quasi-federal and states that it is a unitary State with subsidiary federal principles, rather than a federal State with subsidiary unitary features. Sir Ivor Jennings has called it a federation with strong centralised tendency in his book *Some Characteristics of the Indian Constitution*. Granville Austin describes it as a co-operative federation.† The Supreme Court of India has referred to the federal structure and to the federal background of our Constitutional system in *Automobile Transport Limited* v. *State of Rajasthan* (A.I.R. 1962 S.C. 1406 at pages 1415 and 1416). Subba Rao J. (as he then was) dealt with this question in his dissenting judgment reported in *State of West Bengal* v. *Union of India* (A.I.R. 1963 S.C. 1241 at pages 1266–1278). After an elaborate

* *Federal Government* by Wheare (1968).

† *The Indian Constitution—Cornerstone of a Nation* by Granville Austin.

discussion of the provisions of our Constitution by comparing it with the provisions of the American, Canadian and Australian Constitutions, Subba Rao J. came to the conclusion thus :

" I have no doubt that the Indian Constitution is a federation " (Page 1269, paragraph 82).

After adverting to the fact that in every federation, there are some unitary elements, he enunciated the real test in the following words :—

" The real test to ascertain whether a particular Constitution has accepted the federal principle or not is whether the said Constitution provides for the division of powers in such a way that the general and the regional governments are each within its sphere substantially independent of the other." (Page 1269, paragraph 82)

In this view, the reservation of residuary power or vesting power in the Union to interfere with the State affairs in emergencies may affect the balance of power in a federation, but it does not destroy its character. Within their respective spheres, both in the legislative and executive fields, they are supreme, their *inter se* relationship is regulated by specific provisions. The relation between the Union and the States cannot be found in the legislative fields demarcated by the Lists, but can only be discovered in the specific constitutional provisions forging links between them. The emergency powers of the Union to meet extraordinary situations do not affect its exclusive fields of operation in normal times.

The fundamental difference between a unitary system and a federal system is that while in the former, the demarcation of powers between the Centre and the local Governments is made by the Central Government, in the latter, this demarcation is made by the written Constitution, which is the source of authority of both the Governments. The supremacy of Courts in interpreting the Constitution and the power to examine the validity of the action both of the Central and State Governments is also an important element in a federal system. That element is embodied in our Constitution. We are of opinion that our Constitution has set up a federal system of government, though our Constitution lacks certain features

present in the American Constitution, e.g., dual citizenship; residuary powers remaining with the States. Subba Rao J. did not consider the absence of these features to affect his conclusion.

5. In considering the nature of the government set up by the Constitution, one important fact should not be overlooked. At the time of the framing of the Constitution, India was divided into two parts, one part comprising the provinces and the other part comprising the Indian States. These Indian States, numbering about 600, were under the direct rule of the Crown, through its representatives. They were allowed to remain under the personal rule of their Chiefs and Princes under the suzerainty of the Crown. This relationship between the Crown and the Indian States, has been sometimes described as paramountcy. When the Indian Independence Act of 1947 was passed, it declared that the suzerainty of the British Crown over the Indian States lapsed. With the lapse of paramountcy, the Indian States were theoretically independent and sovereign. Nevertheless, the States realised that it was not possible for them to maintain their independent status separate from the rest of the country and therefore most of the States acceded to the Indian Union. The States of Hyderabad and Jammu and Kashmir were the exceptions. Subsequently, those two States also acceded to India. The Indian Constitution thereupon dealt with the problem of fitting these States into the constitutional structure of India. It is unnecessary to consider in detail as to how this objective was achieved by a three-fold process. However, what is significant is that the States at the time of their accession surrendered their rights to the Indian Union only on three subjects, viz., Defence, Foreign Affairs and Communications. It was only subsequently that these States acceded to India in respect of all matters, included in the Union and Concurrent Legislative Lists, except only those relating to taxation. Special provision had to be made only for Kashmir in view of its insular position and problems. These States came to be known as Part B States. The original Constitution had a separate Part relating to them. This circumstance, namely, that the Indian Union comprised not only the Provinces of British India, which may be said to be more or less administrative units without any independent status, but also Indian States, which at the time of their accession to the Indian Union, were independent and sovereign

units, is conclusive on the question concerning the nature of the system of government embodied in the Constitution. It is basically a federal system.*

6. Though the Constitution set up a federal system, it must be admitted that there are several provisions which are inconsistent with the principles of federalism. There are unitary trends and in the allocation of powers there is a strong bias and tilting of the scales in favour of the Centre. In a federation the National and State Governments exist on a basis of equality and neither has the power to make inroads on the definite authority and functions of the other unilaterally. In India, however, the National Government is vested with powers on certain occasions to invade the legislative and executive domain of the States. There is a theme of subordination of the States running right through the Constitution. There is a large scope for the Centre to intrude into State affairs and thus affect the autonomy of the States. There are certain provisions in the Constitution, which appear to confer on the Union Government supervisory power over the States even in well-defined and specified matters which are exclusively in the State field. This by itself does not reduce the status of the States to that of administrative units in a unitary government as in the days of the British Rule. But the way in which and the frequency with which the Centre and Parliament have sought to interest themselves and to interfere in matters relating exclusively to State subjects, leave the impression of an anxiety on the part of the Centre to exercise an over-all supervision of the administration of the entire country.

7. The several methods and agencies employed by the Centre to exercise control over the States can be analysed under the following broad heads :—

(i) Giving directions to State Governments and the provision for drastic penalty on non-compliance with such directions (articles 257, 365 and 356);

(ii) Power of Parliament under article 249 to legislate even on subjects allotted to States in the State List in the Seventh Schedule;

(iii) Delegation of Union functions to States with corresponding duties, irrespective of their consent;

* This is also the view of Thiru Bhabatosh Datta—*See* his article captioned "Need for re-examination of Centre-State financial relations" published in the Supplement to *Capital*, dated the 31st December 1970.

(iv) Emergency provisions under which the Centre can completely supersede the State Governments (articles 352, 356 and 360);

(v) Grants-in-aid under article 275 and discretionary grants under article 282;

(vi) All-India Services;

(vii) Reservation of Bills passed by State Legislatures for submission to the President; and

(viii) Extra constitutional agencies like the Planning Commission.

Each of the above matters will be dealt with in detail in subsequent Chapters of this Report.

The reasons for the perpetuation and growth of unitary trends are mainly—

(*a*) Certain provisions in the Constitution which confer special powers on the Centre;

(*b*) One-party rule both at the Centre and in States;

(*c*) Inadequacy of States' own fiscal resources and consequent dependence on the Centre for financial assistance; and

(*d*) The institution of Central Planning and the role of Planning Commission.

Some of the provisions of the Constitution, which confer extraordinary powers on the Centre, have been referred to above and will be discussed subsequently.

There can be no doubt that the continuation in power of the same party, both at the Centre and practically in all the States, has resulted in the development of unitary trends. In Lal Bahadur Shastri Memorial Lectures, delivered in March 1969, Dr. K. Subba Rao, retired Chief Justice of India, supports our conclusion. He says,—

* " ..... till the recent elections the Constitution was worked practically as a unitary form of government. There was a tendency to whittle down the powers of the States which were

* Page 18, *The Indian Federation* by K. Subba Rao.

already in attenuated form. The main reason for this was that the same party had been in power in the Centre as well as in the States for a long continuous stretch of time..... The result was that the Union Government had been able to control the State Governments both on the administrative as well as on organisational side. Some of the important members of the High Command of the party in power were also important members in the Cabinet. In fact the Prime Minister was controlling not only the Central Cabinet but also the High Command. Through the High Command he was controlling the State political units and also the elections to the Pradesh units and the selection of suitable candidates to the Legislature. By calculated distribution of seats, the Central Government through the High Command acquired the hold on the State Legislatures, and the State Ministers. By this process the States had practically become the administrative units of the Centre.

After the new elections the political structure of the entire country had changed..... Different parties came into power in different States but the Congress party controls the Centre."

In several States, the party in power is not the same as the party in power at the Centre. It is not surprising that the non-Congress Governments in the States should begin to assert their autonomous character. The States have been becoming increasingly discontented with their role in the Indian federal system and their demands for greater autonomy has become more and more insistent.

8. The reactions in certain quarters to this demand is by way of emphasis on the necessity of a strong Centre. What exactly is meant by this expression is often left vague and nebulous. What is the kind of strength that the Centre should possess and which in the interests of the country it should not be deprived of?. An elderly statesman, who has been continuously taking an interest in making a study of the political problems in the country since the time of the Constituent Assembly of which he was a member, examines critically the plea for a strong Centre and says—

" ..... a strong Centre is indispensable if India is not to disintegrate and dissolve in chaos. But I do not agree with those who equate strength with the range of formal constitutional powers.

On the other hand, I am emphatically of opinion that by taking upon itself too many obligations in relation to the vast population spread over the length and breadth of India, the Centre will become incurably weak. It is only through concentration on essential All-India matters and by refusing to share the responsibility in such matters with the States, while giving complete autonomy to the States in the rest of the field of Government, the Parliament and the Central Government can be really strong. The tendency towards vague unhealthy paternalism which has come to envelop Indian Federalism as a result of the dominance of a single party during the first two decades of independence is as bad for the Centre as it is unpleasant and provocative to the States".*

The following speech of the late Dr. C. N. Annadurai, Chief Minister of Tamil Nadu, in the Legislative Council on the 27th June 1967, contains trenchant criticism of the implications of a strong Centre :—

"I want the Centre to be strong enough to maintain the sovereignty and integrity of India as it is the fashion to call it. I would put it in another way. It is to safeguard the independence of the country. I am prepared to say that anybody will accept without any remorse or without any reservation that all these powers needed to make the Centre responsible for the safety of this country ought to be with the Centre. But that does not mean that the Centre in order to safeguard India from Pakistanis or the Chinese or the Baluchis, should think of having a health department here. In what way does that strengthen the sovereignty and independence of India ? Should they have an education department here ? In what way does that improve the fighting capacity of the military personnel there ?"

We have, in considering the several problems which arise in the matrix of Centre-State relations, kept in mind the need for a strong Centre, understood in a proper sense.

---

* *Vide* the paper of Thiru K. Santhanam presented by him to the National Convention on Union-State Relations held in New Delhi in April 1970.

CHAPTER III.

ADMINISTRATIVE RELATIONS.

The executive power of the State is coextensive with its legislative power (article 162). In other words, the executive authority of the State is exclusive in respect of State subjects; it extends to concurrent subjects also, unless other provision is made in the Constitution or in an Act of Parliament; it goes without saying that the State has no executive power in relation to Union subjects. Article 298 also is relevant here. Under this article, the executive power of the State extends to carrying on of trade or business and to the acquisition, holding and disposal of property and the making of contracts. This amplitude of executive power of the State is curtailed by the other provisions of the Constitution. The provisions which impinge on the executive authority of the State enable the Union to effectively assume to itself (the Union) the executive powers of the State. The two articles which magnify the power of the Union are articles 256 and 257.

Issue of directions to the States by the Union.

2. Articles 256 to 261 deal with administrative relations between the Union and the States. Articles 256 and 257 empower the Union executive to issue directions to the State Governments to ensure that the latter comply with, and do not impede or prejudice, the laws of the Union or the Union Executive in the exercise of its authority. The two articles are based on similar provisions in the Government of India Act, 1935 (sections 122 and 126).

3. There is no precedent for the two articles in the American, Canadian, Swiss and Australian Constitutions. This power conferred on the Centre to give directions to the State is repugnant to a federal constitution like that of the United States and contrary to the federal principle. It appears as though that even within the sphere covered by List II, the Union Executive shall have the power to give directions to the State Executive. Not only is this power so repugnant, there is the further provision for visitation of grave consequences on a State for failure to carry out such directions. Article 365 entitles the Centre to supersede the State Government by

assuming to itself under article 356 the powers of the State Government concerned. There was no provision in the Draft Constitution for securing compliance with directions issued under articles 256 and 257. It was only at a later stage that article 365 was inserted in the Constitution. Article 365 highlights the subordinate position of the States. In a case where the Union is aware of the fact that its directions could not be complied with by the State, the Union could still issue directions under articles 256 and 257, and create a situation enabling the Union to invoke its powers under article 365 on the ground of failure by the State to implement its directives. This obviously results in the assumption of the legislative and executive powers of the State by the Union. Viewed from this angle, articles 256 and 257 appear to be objectionable and constitute a serious intrusion into the executive field of the unit. Even at the time of framing of the Constitution, article 365 was denounced by several members of the Constituent Assembly.* They included Pandit Thakur Das Bhargava and Pandit H. N. Kunzru. They expressed their dismay at the "drastic power" of the article and contended that the Drafting Committee had exceeded its authority by introducing the provision when the drafting was nearly completed.† Article 365 was introduced just 11 days before the Constitution was adopted by the Assembly. Other opponents of this article complained that it resembled the hated section 93 of the 1935 Act "in all its nakedness and horror".‡ However, ultimately article 365 was adopted by the Assembly. It is article 365 which renders articles 256 and 257 most objectionable. These articles are unprecedented and affect the autonomy of the States. Article 257 authorises an executive encroachment on a parliamentary function.

4. Dealing with the provision relating to communications under article 257, Thiru Asok Chanda remarks as follows :—

"In the distribution of jurisdiction between the Union and the states, only such highways and waterways as are declared by Parliament to be national, fall in the sphere of Union responsibility. But despite this distribution, the Union has been empowered to give directions to the states for the construction and maintenance of means of communications considered by it to be of national.... importance. This provision thus makes it possible for the

* Pages 506, 510, 513, 518-520, *CAD* XI.
† Pages 512 and 510, *ibid.*
‡ Pages 515-516, *ibid.*

Union executive to arrange for the construction and maintenance of means of communications without invoking the legislative powers of Parliament for their formal declaration as 'national'. The purpose of this executive encroachment on a parliamentary function is not very clear ".*

The most objectionable feature in regard to articles 256 and 257 is that the only condition to be satisfied before the issue of such directions is the unilateral satisfaction of the Government of India. In both the articles, the following language is employed, " such directions to a State as may appear to the Government of India to be necessary for that purpose "

It may be also noticed that though there is an obligation imposed on the States not to prejudice the exercise of the Union executive power, there is no corresponding declaration imposing an obligation on the Union not to prejudice the exercise of executive power of the States.

5. Two courses seem open. One is the omission of articles 256 and 257 in their entirety. Another alternative has been suggested by Thiru R. S. Gae, Secretary to the Government of India, Ministry of Law, Department of Legal Affairs. In his article captioned *Administrative Relations between the Union and the States* published in the October-December 1969 issue of the *Journal of Constitutional and Parliamentary Studies*, he has suggested that Parliament could, in a case where the State has failed to carry out the directions issued to it, pass a law empowering the Central Government to call upon the State Ministers and the authorities of the State to implement the directions issued by the Central Government and imposing a penalty for failure to do so. He is in favour of invoking article 258 (2) to achieve this purpose. According to his suggestion, the State Legislature and the State Cabinet could be continued. The State Cabinet could continue to hold office; but the position will, in some respects, be worse than what would obtain in a situation where article 356 is put into force. The State Cabinet is collectively responsible to the Legislative Assembly, which would continue to function in the situation contemplated by Thiru Gae.

What is to happen if the State Legislature expressly prohibits the Ministry from implementing the directions of the Central Government ? Apparently, according to the Union Law Secretary,

* Pages 107-108, *Federalism in India* by Asok Chanda.

recourse could then be had to article 365 and consequently to article 356 if this contingency fructifies. In short, according to him, the State Cabinet would be subject to the control of two masters and should be responsible to both (viz.) the Central Government and the State Legislature. This is an impossible position. Further, in dealing with the legislative powers we have suggested modification of article 258 (2) to provide that Parliament should not confer any power or impose any duty on the State except with the consent of the State. Therefore, the only alternative in case articles 256 and 257 are to be retained, is to provide that no direction as contemplated in article 256 or 257 should be issued, except in consultation with, and with the approval of, the Inter-State Council to be constituted in the manner and with the functions suggested by us below*.

In any view we recommend that article 365 should be repealed.

6. Besides articles 256 and 257, the following articles also empower the Union Government to issue directions and they are dealt with below :—

Article 339 (2).—This article enables the Union to issue 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. The welfare of the Scheduled Tribes is a matter in which the States are vitally interested and in fact it is the States which have to meet the expenditure involved in the welfare schemes undertaken for the benefit of these Tribes. Our remarks regarding articles 256 and 257 apply here also.

Article 344 (6).—This article empowers the President to issue directions based on the report of the Official Language Committee of Parliament. Issue of directions in regard to language is bound to create disharmony between the Union and the States. This provision should, therefore, be omitted.

We want to make it clear that failure to implement any direction issued under any article should not result in the imposition of President's rule by invoking article 365.

*Thiru K. Santhanam in the paper presented by him to the National Convention on Union-State Relations held in April 1970 has also suggested that the power of issuing directions under articles 256 and 257 should be exercised only after consulting the Inter-State Council.

Inter-State Council.

7. Article 263 provides for the constitution of Inter-State Council. Thiru K. Santhanam in his paper submitted to the National Convention on Union-State Relations has urged the constitution of the Council. Earlier, the Study Team of the Administrative Reforms Commission had also strongly recommended the establishment of an Inter-State Council under article 263. According to the Administrative Reforms Commission, the Council should consist of the Prime Minister, Union Ministers for Finance and Home, Leader of the Opposition in the Lok Sabha and five representatives of the five zonal councils and special invitees.

8. This Committee recommends the immediate constitution of the Inter-State Council. The proposed Council may consist of the Chief Ministers or their nominees, all the States having equal representation, with the Prime Minister as the Chairman. No other Minister of the Union Cabinet should be a member of the Council.

9. Every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in Parliament, be placed before the Council, and its comments and recommendations thereon should be placed before Parliament at the time of introduction of the Bill.

10. It should be definitely provided that before the Union Government takes any decision of national importance or any decision which would affect one or more States, the Inter-State Council should be consulted.

Exception may be made probably in regard to subjects like defence and foreign relations. But even in such matters the decision of the Central Government should be placed before the Inter-State Council subsequently without any avoidable delay.

11. If the Inter-State Council is to be really effective, its recommendations should be made ordinarily binding on both the Centre and the States.

If for any reason, any recommendation of the Inter-State Council is rejected by the Central Government, such recommendation together with reasons for its rejection should be laid before Parliament and the State Legislatures.

CHAPTER IV.

LEGISLATIVE FIELD.

Distribution of Legislative Powers.

The Constitution Acts in force before 1919 provided only for a unitary system of government and the question of distribution of legislative powers as between the various local Governments and the Central Government did not arise. Section 45-A of the Government of India Act (1919) read with section 129-A of that Act empowered the Governor-General in Council with the sanction of the Secretary of State in Council to make rules providing for the classification of subjects, in relation to the functions of government, as central and provincial subjects, for the purpose of distinguishing the functions of local governments and local legislatures from the functions of the Governor-General in Council and the Indian legislature. The Devolution Rules made under section 45-A provided for the classification of subjects into two categories—central and provincial. There was no Concurrent List as such. Any matter not included in the central subjects or the provincial subjects was treated as a central subject—*See* item 47 of Part I of Schedule I to the Devolution Rules. Notwithstanding the division of powers, section 84 (2) of the 1919 Act conferred powers on the Central Legislature to legislate in relation to a Provincial subject and powers on the local legislature to legislate in relation to a Central subject. The classification of the subjects in the Devolution Rules formed the basis for the three Lists set out in the Seventh Schedule to the Government of India Act, 1935. The Constitution adopted the three Lists with modifications. The Union List consists of 97 entries of which 12 entries relate to taxation. The State List consists of 65 entries of which 19 entries relate to taxation. The Concurrent List consists of 47 entries and the only entry which may be said to relate to taxation is that dealing with stamp duties other than duties or fees collected by means of judicial stamps.

2. The residuary power of legislation and taxation is vested in the Union. Parliament can legislate on a State subject, even under normal conditions, without the need for any emergency, if the Council

of States by the requisite majority authorizes it to do so ; again, if two or more State Legislatures authorise Parliament in that behalf, Parliament can legislate on a State subject.

3. A brief survey of the provisions bearing on this subject of the Constitutions of some of the major Federations may be useful in this context. The Constitution of the U.S.A. is said to provide for a Federal Government of enumerated powers. Article I, section 8, enumerates the powers of the Congress. The Tenth Amendment states that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. The State Legislature is competent to enact laws in respect of all matters not delegated to the Federal Government. The Constitution does not by itself classify any subject as one within the Concurrent jurisdiction of both the Congress and the State Legislature. The word " concurrent " occurs for the first time in the Eighteenth Amendment in section 2. However, the Supreme Court has held that although inter-State commerce is within the jurisdiction of the Federation, the States may legislate regarding such matters as pilotage, wharves, harbours, etc., but that they may not take any steps that in effect will operate directly to hinder or regulate the carrying on of inter-State commerce itself.

In Canada, section 91 enumerates the exclusive powers of Parliament and vests residuary power also in it. The subjects exclusively assigned to the Provinces are enumerated in sections 92 and 93. The only subjects included in the concurrent jurisdiction of both the Dominion Parliament and the Provincial Legislatures are old age pensions, agriculture and immigration—*See* sections 94-A and 95.

As regards Australia, section 51 of the Commonwealth Constitution Act enumerates the Concurrent powers. Section 52 enumerates the exclusive powers of Parliament. By virtue of section 107, the State Legislatures have, besides the concurrent jurisdiction, the residuary powers of legislation also.

In Switzerland, certain matters are exclusively vested in the Confederation and the Cantons deal with other matters, the residuary power being vested in the Cantons. The concurrent field includes immigration, quarantine, banking and agriculture.

4. The Committee is of opinion that it is desirable to constitute a High Power Commission, consisting of eminent lawyers and jurists and elderly statesmen with administrative experience to examine the entries of Lists I and III in the Seventh Schedule to the Constitution and suggest redistribution of the entries. The Committee, however, has examined the question in great detail and its views are set forth below.

5. As already pointed out, the Union List reproduces substantially the entries in the Federal List in the Government of India Act, 1935. But some of the items which under that Act were within the jurisdiction of the Provincial Legislature, have now been placed within the exclusive jurisdiction of Parliament. The following items are instances in point :—

Entry 48 deals with stock exchanges and futures markets. There was no corresponding entry in the 1935 Act. In *Duni Chand* v. *Bhuwalka Brothers* [(1955) I S.C.R. 1071], the Supreme Court held that legislation relating to futures markets fell within entry 27 of List II, namely, trade and commerce, markets, etc. By virtue of the present entry, Parliament has enacted the Forward Contracts (Regulation) Act, 1952 (Central Act LXXIV of 1952), and the Securities Contracts (Regulation) Act, 1956 (Central Act 42 of 1956). The validity of the legislation has been upheld by the Supreme Court in *Waverly Jute Mills* v *Raymon & Co.* (A.I.R. 1963 S.C. 90).

Entry 84 empowers Parliament, to the exclusion of the State Legislatures, to enact laws relating to duties of excise on certain articles including medicinal and toilet preparations containing alcohol. This corresponds to entry 45 of the Federal List in the Government of India Act. In that Act, entry 40 of the Provincial List empowered the Provincial Legislature to levy certain excise duties. Whereas under the 1935 Act, a duty on medicinal and toilet preparations containing alcohol could be levied only by the Provincial Legislature, under the Constitution, the State Legislature cannot levy it and it is Parliament alone which could levy the same. Granville Austin in *The Indian Constitution—Cornerstone of a Nation* attributes this change to a letter circulated among Members of the Constituent Assembly by the Magora Chemical Company Limited of Poona advocating the assumption of excise duties by the Union, because the Provincial excise duty on alcohol made it

difficult to ship tinctures from one province to another. The author also refers to a footnote to the entry stating that it was included in the Union List to provide for " uniform rates of excise duty " " for the sake of the development of the pharmaceutical industry ".

It will be observed from the foregoing that some matters which were within the legislative sphere of the constituent units have now been placed in the Union field completely shutting out the State from having anything to do with those items. It may be interesting to note that even at the time of framing of the Constitution, there was an impression that the Legislative Lists had " stolen a number of items from the provincial and concurrent lists and put them in the federal list ". Sir N. Gopalaswami Ayyangar no doubt tried to dispel this apprehension by saying that a scrutiny and comparison of the Lists with those in the 1935 Constitution would reveal that there was no case where the sphere assigned to the Provinces by the 1935 Act had been encroached upon except in one or two stray instances.*

6. The Committee is of the opinion that the three Lists have to be modified on the lines suggested below—

(i) UNION LIST.

LIST I.

" 7. *Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war*".

The entry is loosely worded and it can be contended that it includes even industries which are not directly connected with defence. It is desirable to replace the entry by a more precise description confining it to armament industries proper. †

" 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.*"

The entry confers overriding power on Parliament. Article 285 exempts Union property from the imposition of tax by the State. The Committee recommends that this exemption should be repealed.

* Page 40, CAD V.

† This is also the view of Thiru K. Santhanam—*See* his paper presented to the National Convention on Union-State Relations held in New Delhi in April 1970.

"40. *Lotteries organised by the Government of India or the Government of a State.*"

It is common knowledge that almost all States are running lotteries. According to the Madras High Court, the State Government cannot prohibit the sale within the State of tickets relating to lotteries organised by the Government of another State. But the Bombay High Court seems to have taken a contrary view. The lotteries run by State Governments stand on a footing different from lotteries organised by private individuals. The proceeds of the lotteries go to augment the revenue resources of the States. It appears reasonable that while lotteries organised by the Union Government may continue to remain in the Union List, the lotteries organised by the States may be transferred to the State List. In the light of divergence of judicial opinion it is necessary to expressly authorize the States to prohibit or regulate any activity in connection with, or relating to, a lottery organised by the Government of another State and this power may be included in the State List.

"48. *Stock exchanges and futures markets.*"

"Futures markets" was an exclusive provincial subject under the Government of India Act, 1935. Stock exchanges deal with matters more or less analogous to negotiable instruments and may, therefore, remain in the Union List. The futures markets deal in essence with contracts relating to trade and commerce, an exclusive State item. We recommend that futures markets may be transferred to the State List.

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

This entry requires special examination. It is based on entry 34 of the Federal List in the 1935 Act. In pursuance of entry 52, Parliament has enacted the Industries (Development and Regulation) Act, 1951 (Central Act LXV of 1951). That Act specifies in the Schedule the various industries declared by Parliament to be industries whose control by the Union is expedient in the public interest. That Schedule has been added to and the number of industries has been increased from time to time. Besides, there are several Acts declaring various industries to be industries

the control of which by the Union is expedient in the public interest. To mention a few, the Coffee Act, 1942 (Central Act VII of 1942), the Rubber Act, 1947 (Central Act XXIV of 1947), the Indian Power Alcohol Act, 1948 (Central Act XXII of 1948), the Central Silk Board Act, 1948 (Central Act LXI of 1948), the Tea Act, 1953 (Central Act XXIX of 1953), the Coir Industry Act, 1953 (Central Act 45 of 1953), the Rice-Milling Industry (Regulation) Act, 1958 (Central Act 21 of 1958), and the Cardamom Act, 1965 (Central Act 42 of 1965).

The various legislative measures, especially the Schedule to Central Act LXV of 1951, have the effect of considerably hampering the industrial progress of the States and destroying their initiative.

The Committee is of the view, which is supported by the opinion of responsible public men, that the Schedule to the 1951 Act contains industries which are not really of national importance. To remedy this defect no amendment to the Constitution is necessary. All that is necessary is to modify the Schedule to the 1951 Act so as to restrict its scope to industries which are really of national importance. This is one alternative course. But then, there are the other statutory enactments mentioned above and so long as the legislative entry remains in the Constitution, nothing prevents Parliament at some future date from declaring any industry to be an industry of national importance.

Entry 52 is vague and the States have been complaining about the way in which Central Act LXV of 1951 had been enforced and its scope enlarged. The Committee recommends that entry 52 should be restricted to industries of national importance or of all India character or to industries with a capital of more than one hundred crores of rupees.

"*53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.*

54. *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.*

55. *Regulation of labour and safety in mines and oilfields.*"

These entries relate to developmental activities of the States. Parliament need not burden itself with the matters specified in these entries. Regulation of labour may be left to be dealt with by the States themselves. The fact that the labour relates to mines and oilfields makes no difference. We recommend that these three entries may be transferred to the State List.

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

It will be clear from this entry, entry 12 of the State List and entry 40 of the Concurrent List that powers in relation to ancient and historical monuments and archaeological sites and remains have been distributed between the Union and the States as follows :—

(i) Ancient and historical monuments and records and archaeological sites and remains which are of national importance are within the exclusive purview of Parliament.

(ii) Both Parliament and the State Legislatures are competent to enact laws in respect of other archaeological sites and remains.

(iii) The State is the sole authority competent to deal with ancient and historical monuments and records which are not of national importance.

This is a matter which in the fitness of things should be assigned to the States.* The subject is linked with local history and culture. The State is as much interested in the upkeep and maintenance of ancient monuments as the Centre if not more. If the State is made the exclusive authority competent to deal with all ancient and historical monuments and records and archaeological sites and remains, one source of friction and misunderstanding would be removed. A controversy has been going on of late between this State and the Centre regarding the Great Temple in Thanjavur. Controversies such as this could well be avoided by transferring the subject to the State List.

* Thiru K. Santhanam has expressed this view in his paper referred to earlier.

"76. *Audit of the accounts of the Union and of the States.*"

The Draft Constitution prepared by the Constitutional Adviser in October 1947 contained a provision for the appointment of a separate Auditor-General for the unit if the Legislature of the unit provided for it by law. The Drafting Committee also included a provision for the appointment of Auditors-in-Chief by the units. But the Constituent Assembly * omitted the provision relating to the appointment of separate Auditors-in-Chief for the units. Audit of the accounts of the States is a matter which should normally speaking be left to the State Legislatures. The State Government is subject to rigid financial control and there seems to be no reason for vesting the power in relation to audit of accounts of the States in Parliament. The audit of the accounts of the States may be transferred to the State List.

"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.*"

We have already referred to the circumstances in which the power to levy excise duties on medicinal and toilet preparations, which under the Government of India Act, 1935, was within the exclusive competence of the Provinces, was included in the Union List. It will be interesting to note that even under the 1919 Constitution these excise duties were placed under the control of the Governor acting with Ministers who were in their turn responsible to an elected body. These excise duties are collected by the States and the entire proceeds are appropriated by them. It is, therefore, appropriate that the power to levy excise duties on medicinal and toilet preparations containing alcohol, etc., should be transferred to the State List.

---

* Page 63, CAD IX.

" 97. *Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.*"

We shall deal with this topic after disposing of the State and Concurrent Lists.

In relation to the other entries of the Union List we are of the opinion that no modification is called for.

(ii) STATE LIST.

List II.

No one has ever suggested that any entry in this List should be transferred to the Union or Concurrent List.*

The State List, although based on the Provincial List in the Government of India Act, 1935, is not identical with it. Some of the entries in the Provincial List have been taken over either to the Union List or the Concurrent List. Some of the entries in the Provincial List which have been altered so as to vest the power in the Union to the exclusion of the States or concurrently with the States are mentioned below :—

" 8. *Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.*"

The corresponding entry in the Government of India Act, namely, entry 31 of the Provincial List referred to narcotic drugs also. This has now been taken over to the Concurrent List in the Constitution—*See* entry 19. While dealing with the Concurrent List we have recommended that entry 19 of the Concurrent List may be transferred to the State List.

" 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.*"

The corresponding entry in the Provincial List, namely, entry 21 referred to devolution of agricultural land also. Succession to agricultural land under the Constitution is governed by entry 5

* *See* also the paper of Thiru K. Santhanam referred to earlier.

of the Concurrent List. Thus, a power which under the 1935 Act was vested in the Provincial Legislature has now been vested concurrently in Parliament also. In dealing with entry 5 of the Concurrent List we have recommended that the said entry 5 may be transferred in its entirety to the State List.

"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.*"

Entry 23 of the Provincial List in the Government of India Act, 1935, included oilfields also. This has now been completely taken away from the State Legislature and Parliament is the sole authority competent to deal with oilfields (entry 53 of the Union List).

Consequent upon our recommendation that entries 53, 54 and 55 of the Union List should be transferred to the State List, entry 23 of the State List may be altered suitably.

"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.*"

The State Legislature is not competent to levy excise duties on medicinal and toilet preparations containing alcohol. This point has been dealt with in relation to entry 84 of the Union List. Entry 51 of the State List may be altered so as to empower the State to levy excise duty on medicinal and toilet preparations containing alcohol, etc.

New entry.—A new entry may be inserted in the State List relating to inquiries and statistics for the purpose of any of the matters in the State List. Under the Government of India Act, 1935, inquiries and statistics for the purpose of any of the matters in the Provincial List were within the exclusive jurisdiction of the Provinces—*See* entry 38 of the Provincial List.

(iii) CONCURRENT LIST.

List III.

The Concurrent List is a reproduction of the Concurrent List in the Government of India Act, 1935, with some additions. The White Paper setting out the proposals of the British Government on the eve of the enactment of the 1935 Constitution and the Report of the Joint Committee of the British Parliament justified the inclusion of a Concurrent List on the ground that it was being inserted in order to secure uniformity in legislation. *

The Concurrent List in the Constitution has reproduced with substantial additions the Concurrent List in the 1935 Act. During the consideration of the Concurrent List by the Constituent Assembly, it was further enlarged by the transfer of certain subjects from the State List or by fresh additions. Thiru K. Santhanam protested in the Constituent Assembly against this expansion of the Concurrent List. †

Even assuming that there is need for a Concurrent List, it will be noticed that there are several items in that List which under the 1935 Act were included in the Provincial List. They are examined below.

The Concurrent List should be confined to entries which are of interest to the country as a whole or of an all-India base and the other entries should be transferred to the State List.

The following are our recommendations in respect of the Concurrent List :—

"5. *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 has already been pointed out, when dealing with entry 18 of the State List, that succession to agricultural land under the 1935 Act was within the exclusive sphere of the Provincial Legislature. This has now been made a concurrent subject.

* *See* extracts from the White Paper and the Report of the Joint Committee of the British Parliament in Appendix IV.

† (e.g.) Pages 888, 911-913, 913-914, 946, 948-949, CAD IX and page 263, CAD VII.

Personal law varies from region to region and it will make for better administrative efficiency, if the subject is dealt with by the States themselves without interference by Parliament. In this view, we recommend that this entry may be transferred in its entirety to the State List.

"8. *Actionable wrongs.*"

The corresponding entry in the Concurrent List in the 1935 Act, namely, entry 14, excluded actionable wrongs included in laws with respect to a matter in the Provincial List from the purview of Parliament. In other words, only actionable wrongs included in laws falling within the Concurrent List were placed under the jurisdiction of the Federal Legislature and that of the Unit Legislatures. This entry may be transferred to the State List.

"17. *Prevention of cruelty to animals.*"

This was no doubt included as entry 22 of the Concurrent List in the Government of India Act, 1935.

But this relates to purely local problems and the entry may be transferred to the State List.

"19. *Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.*"

As pointed out in relation to entry 8 of the State List, "narcotic drugs" was within the Provincial field. Entry 19 may be transferred to the State List.

"22. *Trade unions; industrial and labour disputes.*

23. *Social security and social insurance; employment and unemployment.*

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

25. *Vocational and technical training of labour.*"

These relate to social welfare and organisation of labour. Questions arising out of these matters have to be decided by the authorities of the State and even Acts passed by Parliament in

relation to these matters have to be enforced through the agency of the State authorities. These entries may, therefore, be transferred to the State List.

"28. *Charities and charitable institutions, charitable and religious endowments and religious institutions.*"

We wish to point out here that even under the 1919 Constitution the subject matter of this entry, which was in the Provincial field, was entrusted to the "transferred half" of the Government, that is, it was a subject to be administered by the Governor acting with Ministers responsible to the Legislature.

This was purely a Provincial subject under the 1935 Constitution—*See* entry 34 of the Provincial List. This State has always taken a keen interest in the regulation of charitable and religious endowments. A comprehensive legislation on the subject enacted in 1926 was subsequently replaced by a separate Act in 1951 which in its turn was repealed and re-enacted in 1959. The Government of India appointed a Commission under the chairmanship of late Sir C. P. Ramaswami Iyer to inquire into the conditions of religious endowments and based on the recommendations of the Commission a draft Bill was introduced in the Lok Sabha. It will be seen that a subject which was within the exclusive sphere of the constituent units has now been taken over to the Concurrent List and this is an instance where the Union has been trying to take on its shoulders a burden which should normally be left to the States themselves.* This entry may be transferred to the State List.

"30. *Vital statistics including registration of births and deaths.*"

Under the 1935 Constitution, registration of births and deaths was the exclusive concern of the Provinces (entry 14 of the Provincial List). Statistics for the purposes of the Provincial List was also within the exclusive competence of the Provinces (entry 38 of the Provincial List). We had a separate Act in this State dealing with registration of births and deaths, namely, the

* Thiru K. Santhanam in his paper referred to earlier has expressed the view that this entry may well be transferred to the State List.

Tamil Nadu Registration of Births and Deaths Act, 1899 (Tamil Nadu Act III of 1899). This has now been repealed by the Registration of Births and Deaths Act, 1969 (Central Act 18 of 1969). This is another instance of an exclusive State subject being taken over to the concurrent field. As regards the vital statistics, attention is invited to the Collection of Statistics Act, 1953 (Central Act XXXII of 1953). This Act also deals with a subject which under the 1935 Constitution was within the exclusive sphere of the Provinces.

As in the case of religious and charitable institutions, the subject matter of this entry also was in the category of "transferred" subjects under the 1919 Constitution. It may be transferred to the State List.

"31. *Ports other than those declared by or under law made by Parliament or existing law to be major ports.*"

"Minor ports" was within the exclusive competence of the Provinces under the 1935 Act—*See* entry 18 of the Provincial List. Under the Constitution, major ports are within the Union field and minor ports have been placed in the Concurrent field.

Minor ports may be transferred to the State List.

"32. *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 corresponds to entry 32 of the Concurrent List in the 1935 Act with the difference that there is no reference to national waterways in the 1935 Act. That is to say, the power conferred on the Provincial Legislature by entry 32 of the Concurrent List in the 1935 Act was not subject to the power of the Central Legislature to deal with national waterways. Under the Constitution, the power of the State Legislature will be subject to the power of Parliament in relation to national waterways.

Inland waterways constitute internal means of communication along with roads. We recommend that this entry may be transferred to the State List.

" 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 fodder, including oilcakes and other concentrates* ;

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

(*e*) *raw jute.*

34. *Price control.*"

These are matters, which under the 1935 Act, fell under entries 27 and 29 of the Provincial List. The matters referred to in items 33 and 34 may well be transferred to the State List without any serious detriment to the national interest.*

" 35. *Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.*"

In the Government of India Act, 1935, as originally enacted, entry 20 of the Concurrent List referred only to mechanically propelled vehicles, but not to taxes thereon. It was by section 3 (2) of the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6 Ch. 5), that a new entry, namely, entry 48-A, was inserted in the Provincial List in the 1935 Act, empowering the Provincial Legislature to impose taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars. Entry 57 of the State List in the Constitution corresponds to entry 48-A of the Provincial List in the 1935 Act. But whereas entry 48-A was an independent provision which could be pressed into service by the Provincial Legislature without being subject to any restriction or limitation, entry 57 of the State List is subject to entry 35 of the Concurrent List. Entry 35 of the Concurrent List thus includes a subject matter which under the 1935 Act was within the exclusive sphere of the units. Moreover, mechanically propelled vehicles are even now controlled

* *See* also the paper of Thiru K. Santhanam referred to earlier.

by the State Governments, although the law relating to them is a Central Act. The various powers and functions are exercised by the State Government and their subordinate officers. We recommend that this entry should be transferred to the State List.

" 36. *Factories.*

37. *Boilers.*

38. *Electricity.*"

These relate to setting up of industries and other activities relating to the economic development of the States. In our opinion they should be appropriately included in the State List.

" 39. *Newspapers, books and printing presses.*"

In a sense these may be said to relate to public order, a matter included in entry 1 of the State List. Viewed from another angle, they may be said to relate to education also, although in an indirect manner. Yet another aspect of the matter is the publicity value of the newspapers and books. Viewed from any angle, these are matters which vitally concern the States. As in the case of several other matters included in the Concurrent List, in this case also, the administrative machinery for the enforcement of the laws is that of the States. This entry may, therefore, be transferred to the State List.

" 40. *Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.*"

We have dealt with this matter when dealing with entry 67 of the Union List. Entry 40 of the Concurrent List may be transferred to the State List.

" 42. *Acquisition and requisitioning of property.*"

This was a matter which under the Government of India Act, 1935, was included in entry 9 of the Provincial List. In the Constitution as originally enacted, the subject matter was spread over entry 33 of the Union List, entry 36 of the State List and entry 42 (as it originally stood) of the Concurrent List.

By the Constitution (Seventh Amendment) Act, 1956, entry 33 of the Union List and entry 36 of the State List were omitted and the existing entry 42 of the Concurrent List was substituted for the corresponding previous entry. Before 1956, the substantive power to enact legislation with respect to acquisition and requisitioning was divided between the Union and the State Legislatures according to the purpose for which such acquisition or requisitioning was to be made. In other words, the State Legislature could not enact a law affecting acquisition or requisitioning for Union purposes. Similarly, Parliament could not enact a law affecting acquisition or requisitioning for State purposes. Prior to 1956, for the acquisition or requisitioning of property for the purposes of the Union, it was Parliament alone that was competent to enact the necessary law and if it was for the purposes of the State, the State Legislature had the exclusive jurisdiction; the only matters included in the Concurrent List were the principles on which compensation should be determined and the form and the manner in which such compensation was to be given. By the 1956 Amendment, the position has been altered radically and acquisition and requisitioning of property even for the purposes of the State have now been brought within the Concurrent field. It is a matter of common knowledge that the law relating to acquisition and requisitioning of property for the purposes of the Union also is being administered by the State Government. We, therefore, recommend that this subject may be included in the State List.

"45. *Inquiries and statistics for the purposes of any of the matters specified in List II or List III.*"

We have recommended that a new entry may be inserted in the State List relating to inquiries and statistics for purposes of any of the matters in that List. Consequent upon this recommendation, entry 45 may be confined to matters specified in the Concurrent List, the reference to State List being omitted.

It will appear from what is stated above that several of the entries in the Concurrent List have to be transferred to the State List.

7. The Concurrent List is a novel feature of our Constitution imported from the 1935 Act. The main grievance of the States about the Concurrent List is that articles 246 and 254 provide for the supremacy of Parliamentary legislation over that of the States. In Canada, the Concurrent List is a short one, comprising as it does only three subjects. In Australia, no doubt the Concurrent List is a fairly long one, but then the residuary powers of legislation vest in the States. In America, there is no Concurrent List as such, although by virtue of the decisions rendered by the Supreme Court, concurrent powers have been deduced in respect of certain specified matters. The Joint Committee of the British Parliament has itself recognised the fact that the subjects specified in the Concurrent field are really provincial in character.* Under the 1935 Constitution, there was a safeguard in relation to legislation by Parliament on a Concurrent subject. It will be seen from the Concurrent List that they were classified into two broad categories. Paragraph XI of the Instrument of Instructions issued to the Governor-General specifically required him to ensure that the Provincial Governments concerned had been duly consulted before any Bill or amendment relating to a matter specified in Part II of the Concurrent List was introduced in the Central Legislature. The Constitution does not provide for any such safeguard. This Committee is of opinion that such safeguard is necessary. This may be provided by insisting that before any Bill is introduced in Parliament in relation to an item in the Concurrent List, the States should first be consulted and their views taken into consideration.† Such consultation with the States should be in addition to obtaining the remarks of the Inter-State Council on the Bill.

The Bill introduced in Parliament should contain a statement showing that such a reference was made. The recommendation, if any, of the Inter-State Council and a brief resume of the opinions expressed thereon by the various State Governments should also be appended to the Bill at the time of its introduction.

---

* *See* extracts in Appendix IV.

† Thiru K. Santhanam has in his paper mentioned earlier suggested a somewhat similar procedure.

The following observations of the then Finance Minister of Tamil Nadu in his Budget Speech, dated the 26th February 1970, forcibly brings out the necessity of the Centre consulting the States in all matters of national policy, particularly economic policies :—

" . . . The important determinants of economic policy in modern society which have a bearing on the production apparatus of the State are banking, currency and fiscal policy and these are controlled wholly by the Government of India . . . It is therefore no accident that very often, the Government of the State is faced with unfortunate consequences of decisions taken by the Centre . . . The recent recession in the country was brought about by monetary and fiscal policies, which reduced effective demand in the country and thus led to a vicious spiral of one industry after another grinding to a halt. At a time at which the country could have gone ahead based on abundance of food production, the economy actually stalled. The textile industry found itself in doldrums, while engineering industries were starved of orders. The pause in planning aggravated the situation further by reducing the level of public investment. The State Governments were not consulted in respect of any of these crucial decisions. Again in the arena of price policy, most of the decisions of the Centre are made without regard to circumstances obtaining in various States. The price situation in the country reflects in a large measure the overall demand and supply. In respect of demand, the Central Government's monetary policy is an important determinant. As regards supply, an imaginative policy decision by the Centre to import crucial raw materials such as steel, cotton, staple fibre and the like at the right time could have stemmed many speculative trends. The State Government has been kept in the dark in regard to the rationale behind policies that are adopted at the Centre from time to time."

RESIDUARY POWERS.

8. The residuary power of legislation was vested by the Government of India Act, 1935, in the Governor-General—*See* section 104. The important safeguard was that he should exercise these functions in his discretion which meant that he was not bound to consult the Federal Ministry much less was he bound by Ministerial advice. In the discharge of functions under section 104, he was subject to the

ultimate control of the British Cabinet and through them to the British Parliament. The Governor-General could authorise either the Federal Legislature or the Provincial Legislature to exercise the residuary power with respect to any matter. Under the Constitution, the residuary power of legislation vests in Parliament (article 248 and entry 97 of the Union List) and there is no safeguard to protect the interests of the States.

9. With the detailed and elaborate enumeration of the subjects in the three Lists, the occasion for the exercise of residuary power and the extent of such power seem to be very limited. The residuary power of legislation and taxation is expressly vested in the units by the Constitutions of the U.S.A., Australia and Switzerland. In Canada, section 91 of the British North America Act no doubt states that the Dominion Parliament may " *make laws for the* peace, order and good Government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." But by virtue of judicial interpretation, particularly by the Privy Council, the present position is stated to be that there are only two separate grants of Dominion power. What was once intended to be a residuary power, namely, the power to make laws for the peace, order and good Government of the country has been held to be inoperative in times of peace and it is stated that the residuary power of the Dominion comes into play only on occasions notably in times of national peril. It is stated that in ordinary times it is impossible to conceive of any general legislation which does not affect to some degree the property and civil rights in the units (an item in the Provincial field) and that the comprehensiveness of the latter has thus filled in almost the whole gap left between the Dominion's enumerated powers and the other enumerated powers of the Provinces. It will thus be seen that in all the Federations the residuary powers vest in the constituent units. We, therefore, recommend that the residuary power of legislation and taxation conferred by article 248 and entry 97 of the Union List be vested in the State Legislatures.

Other Legislative Provisions.

10. As already stated, apart from the Legislative Lists, the articles mentioned below confer independent powers of legislation on Parliament.

Article 154 (2) (*b*).—This empowers Parliament to confer functions on authorities subordinate to the Governor. The consent of neither the State Legislature nor the State Government is necessary for this purpose. The remarks in relation to article 258 (2) will apply here also.

Article 169 (1).—This article relates to the abolition or creation of Legislative Councils in States. It empowers Parliament by law either to abolish a Legislative Council or create one where it does not exist now. The condition precedent for the exercise of this power by Parliament is the passing of a resolution by the Legislative Assembly of the State concerned. Parliament is not bound to act under this article merely because the Legislative Assembly has passed a resolution to that effect. The composition of the State Legislature is a matter to be decided by the people of the State and the Members of the Assembly who represent the people may be expected to act in accordance with the wishes of the people. In fact, in the initial stages of the framing of the Constitution, a provision was included in the Draft Constitution providing for the introduction of a Bill in the State Legislature itself for altering the provisions of the Constitution relating to the composition of the State Legislature. The draft originally provided that the Bill after being passed by the Legislature of the unit should be ratified by Parliament and the Bill presented to the Governor for his or President's assent. Subsequently, however, this provision was modified to provide that the assent should be that of the President only. But the Bill had to be initiated in the Legislature of the unit and then after being passed by the unit Legislature had to be ratified by Parliament. In the Draft Constitution prepared by the Drafting Committee in February 1948, the provision figured as article 304 (2). According to the draft article, a Bill seeking to make any change in the Constitution relating to the number of Houses of the Legislature of the State had to be initiated in the State Legislature itself and after being passed by it, it had to be ratified by Parliament and assented to by the President.

In the U.S.A., Switzerland and Australia, it is the State which determines the number of Houses of its Legislature and the Federal or General Government has nothing to do with the matter. We would, therefore, recommend that article 169 (1) may be so amended as to empower the Legislative Assembly of the State to provide for the abolition or creation of a Legislative Council.

Article 249.—There is no precedent for this article in any of the four federations of the traditional type, nor in the Government of India Act, 1935. This article had its genesis in the visit of the Constitutional Adviser, Sir B. N. Rau, to the U.S.A. in November 1947. The Report of the President's Committee on Civil Rights published in that country recommended that the National Government must take the lead in safeguarding the civil rights of all Americans and that the Congress must enact the necessary legislation. Sir B. N. Rau suggested a provision identical with article 249 so that when legislation on a State subject was called for on a national scale, the Central Legislature should have power to enact it. He stated that since it was dependent on a majority of the Council of States, it was sufficient to safeguard the interests of the constituent units. Even at the time of the framing of the Constitution, there was considerable opposition to the article. Thiruvalargal H. V. Pataskar, O.V. Alagesan and B. M. Gupte regarded the article as objectionable and inconsistent with the concept of a federal distribution of powers. They thought that it was unnecessary in view of the other provisions in the Constitution. They pointed out that inasmuch as the article enabled Parliament on the strength of a resolution of the Council of States to invade the State List, it was a "mischievous" one.* Thiru Jayaprakash Narayan wanted the article to be omitted. The Bombay and East Punjab Legislatures regarded it as a grave infringement of provincial rights and favoured its omission.† Thiru T. T. Krishnamachari supporting‡ the article maintained that the units could exercise checks through their representatives in the Council of States and that there was enough scope for the units through their representatives in the Council of States to tell them that the Central powers should not be renewed. It has to be stated here that the Council of States is an indirectly elected body and that the representation of the States is on the basis of population even here, as in the Lok Sabha. The more *populous States dominate* the Rajya Sabha. There would have been some justification for this article, had the States got equal representation in the Council of States which is not the case. This article seems to militate against the fundamental principle of federalism.

---

* Pages 801-802 and 806, CAD VIII.
† Page 203, Granville Austin.
‡ Page 805, CAD VIII.

The federal principle receives a jolt by the provision made in article 249 of the Constitution.*

Article 249, which empowers Parliament to legislate with respect to a matter in the State List, if a resolution supported by not less than two-thirds of the members present and voting in the Rajya Sabha approves of such action, is wholly derogatory to the conception of a federation and is a serious inroad into State autonomy.†

"National interest" is a criterion wide enough to include any matter which concerns the country as a whole. Moreover, the resolution of the Council of States is conclusive as to whether it is expedient in the national interest that Parliament shall legislate with respect to State List matters.

It is a radical deviation from the generally accepted notion of federalism to permit a national legislature to transfer to itself unilaterally powers reserved to the States by the Constitution. In the U.S.A., Congress cannot formally transfer to itself any of the powers belonging to the States. A Constitutional amendment is the sole means. Similar is the case in Australia also. In Canada, under the residuary power relating more particularly to the "peace, order and good government of Canada", the Dominion Parliament may legislate on provincial subjects whenever they assume national importance; but this power has been very much circumscribed by judicial decisions. Moreover, it is the judiciary and not the Dominion Parliament which has to determine finally whether a matter has assumed national dimensions, *vide A. G. Ontario* v. *Canada Temperance Federation* (1946 A.C. 193). In India, the Supreme Court has taken the view that the judiciary has no power to decide such questions.‡ Article 249 thus enables the majority in the Rajya Sabha to override the normal distribution of powers. The replies received by the Committee favour repeal of the article. It may, therefore, be omitted.

---

* *Vide* page 89, *Federalism in India* by Asok Chanda.

† *See* also the paper of Thiru K. Santhanam referred to earlier.

‡ *Vide State of West Bengal* v. *Union of India* (A. I. R. 1963 S. C. 1241).

Article 252.—This is based on section 103 of the Government of India Act, 1935. But there is one material difference between the two provisions. Whereas under section 103, the Provincial Legislature which has agreed to legislation by the Federal Legislature or has adopted the Act of the Federal Legislature could amend the Central Act or even repeal it, under article 252, the State Legislature is expressly prohibited from amending or repealing a Central Act passed in pursuance of resolutions of the Legislatures of two or more States, although the subject matter of legislation is entirely within the State sphere. The Drafting Committee stated that the article was in conformity with section 51 (xxxvii) of the Australian Constitution read with section 109 of that Constitution. It may be pointed out that under the Australian Constitution, the power conferred by section 51 is not exclusive to the Commonwealth Parliament and that the State Legislature also can exercise the power. In other words, any law passed by the Commonwealth Parliament on the strength of section 51 (xxxvii), can be amended or repealed by the State Legislature—cf., section 107. We recommend, therefore, that the position as it obtained under the Government of India Act, 1935, may be restored.

Article 258 (2).—This is based on section 124 (2) of the 1935 Act. In the U.S.A., the Federal Government cannot transfer to the States, nor can the States transfer to the Federal Government, their respective legislative powers. Such delegation of legislative power is forbidden by the general doctrine that a delegated power may not be delegated. Under the Canadian Constitution, neither the Dominion nor the Province can delegate its legislative power to the other. It may be pointed out here that according to clause (1) of article 258, before the President entrusts any function to the State, he has to obtain the consent of the State. A similar condition may be laid down in respect of clause (2) of that article. It may be provided that before Parliament confers powers, or imposes duties, upon the State or any officer or authority thereof, the consent of the State should be obtained.

Reservation of State Bills for Consideration by President.

11. Incidental to the power of legislation vested in the State is the provision in the Constitution contained in several articles requiring the reservation of certain State Bills for the consideration of the President. These provisions are dealt with below :—

Article 31 (3) lays down that no law providing for the acquisition or requisitioning of property shall be valid unless it has been assented to by the President. The reason for this provision is not obvious. If the law is within the competence of the State Legislature and is consistent with the Fundamental Rights then it will be valid. *Per contra*, if the law is outside the legislative competence of the State Legislature or is inconsistent with any of the Fundamental Rights, the assent of the President cannot be pressed into service for sustaining its validity. Granville Austin has surmised the reason for this provision thus :—

"The clause reserving all property legislation for presidential assent must also have been included at Patel's demand. For it meant that, so long as he lived, Patel could block any legislation that seemed to him unjust—"the President", of course, meant the Cabinet, and in the Cabinet Patel had veto power. And Nehru, one presumes, was also not averse to the Union Executive's having the opportunity to dampen unseemly zeal in the states." (Page 98)

Article 31 corresponds to section 299 of the Government of India Act, 1935. There was no provision in section 299 for reserving for consideration of the Governor-General or the British Crown, Bills passed by the Provincial Legislatures providing for the compulsory acquisition of land, etc. Sub-section (3) of the section no doubt stated that no Bill or amendment relating to the subject matter should be introduced in the Provincial Legislature except with the previous sanction of the Governor in his discretion. The Instruments of Instructions issued to the Governor-General and the Governor required them that if they felt any doubt whether or not a Bill offended against section 299, the Bill should be reserved for consideration by the British Cabinet.—*See* paragraph XIII (*c*)

of the Instrument issued to the Governor-General and paragraph XVII (c) of the Instrument issued to the Governor. This requirement regarding reservation of Bills for assent by the Governor-General or the British Cabinet was not part of the 1935 Act. It was an administrative arrangement and any infraction of the Instruments was not justiciable; nor did such infraction affect the validity of the action of the Governor-General or the Governor —*See* sections 13 (2) and 53 (2) of the 1935 Act. The reason for the provision in the Instruments is to be found in the recommendation of the Joint Parliamentary Committee. That Committee stated in paragraph 369 of its Report that some general provision should be inserted in the Constitution Act " safeguarding private property against expropriation, in order to quiet doubts which have been aroused in recent years by certain Indian utterances". It, therefore, recommended that the Governor or the Governor-General should be directed by the Instrument " to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interests will be adversely affected by the legislation". It will thus be seen that the requirement that Provincial Bills relating to acquisition of property should be assented to by the Governor-General and if he had any doubts by the Crown was inserted in the 1935 Constitution to guard against expropriation of property and with reference to the sentiments expressed by national leaders of this country. The Governments both at the Centre and in the States are by and large committed to schemes of socio-economic development without unduly burdening the public exchequer. Again, under the 1935 Act, even if a Bill relating to acquisition of property was not reserved for the consideration and assent of the Governor-General or the British Government, the validity of the relevant Act was not open to doubt. Under the Constitution, however, no such law would be valid unless it is assented to by the President.

A paper submitted to the National Convention on Union-State Relations held in New Delhi in April 1970 deals with Presidential assent to the State Bills. The writers, commenting on article 31 (3), have stated that under that article, the adequacy of the compensation cannot be questioned in courts and that in the absence of judicial scrutiny, the Centre, while giving assent,

can ensure that the States do not take away private property without compensation and that compensation is given on certain uniform principles throughout the country. It has to be mentioned here that in the Bank Nationalisation case, the Supreme Court has categorically stated that it is for the judiciary to go into the question of the adequacy of compensation for property acquired by the State. Even assuming, without granting it, that courts cannot sit in judgment over the legislature's decision regarding the quantum of compensation, it is not clear as to how the scrutiny of the Union Government will improve matters. As already stated, the validity of the legislation has to be sustained with reference to the competence of the State Legislature to undertake it and its consistency with the Fundamental Rights. As regards uniformity in the matter of compensation, this could be easily secured through conferences and various other forums such as the National Development Council. The States have to undertake several legislative measures for improving the social and economic conditions of the masses and the requirement that in every such case involving acquisition of property, the Centre should be approached, necessarily delays matters. It seems that article 31 (3) may well be omitted.

The next article to be considered here is the first proviso to article 31-A (1). Here too, the authors of the paper submitted to the National Convention seek to confer on the Centre the role of a superior sitting in judgment over a subordinate and trying to pull up the subordinate. The Centre cannot be fully aware of the local problems in the various parts of the country. As an instance, article 31-A (2) (*a*) defines the expression "estate" and goes on to state that it includes lands held under ryotwari settlement. It is well known that in Tamil Nadu and Andhra Pradesh at any rate so far as the common man is concerned and even for the purpose of statutory drafting, ryotwari lands are entirely different from lands comprised in an estate. In this part of the country, the term "estate" is used in relation to zamindari and inam lands, as distinguished from ryotwari lands. This artificial definition could well have been avioded if only the matter had been left to be dealt with by the State Government itself.

It will be clear that the authorities in Delhi had failed to recognise the difference between the ryotwari system of land tenures obtaining in this part of the country and the zamindari system.

Article 31-A may be amended so as to dispense with the need for the assent of the President for the Bills.

Article 200 is an omnibus provision which confers power on the Governor to reserve any Bill for the consideration of the President. The main part of the article is an enabling one, that is to say, it is merely directory and it is open to the Governor either to reserve the Bill for the President's consideration or to assent to the Bill. The second proviso is mandatory in character and it casts an obligation on the Governor to reserve the Bill referred to therein for the consideration of the President. It will be useful here to refer to article 201 also. The two articles read together make it clear that when a State Bill is reserved by the Governor for the consideration of the President, the latter can withhold assent from the Bill and even when the State Legislature passes the Bill for the second time, the President is under no obligation to assent to the Bill. This is in sharp contrast with article 111, according to which if the President returns a Bill passed by Parliament for reconsideration and Parliament passes it again, the President has necessarily to assent to it. The President, which means the Central Cabinet, can thus effectively block State legislation if the Central Cabinet chooses it that way. Granville Austin in dealing with articles 200 and 201 says :—

" In theory they invalidate the division of powers, for ' there is no means of overriding the President's veto in the case of State legislation '. " (Page 207)

It follows that consistent with State autonomy, the power now conferred on the Governor to reserve any Bill for the President's consideration, should be taken away.

The second proviso to article 200 leaves no choice to the Governor and it requires the Governor to reserve the Bill for the consideration of the President if it is likely to so derogate from the powers of the High Court as to endanger the constitutional position of the High Court. The corresponding provision of the

1935 Act, namely, section 75 did not contain a provision similar to the second proviso to article 200. But paragraph XVII (b) of the Instrument of Instructions issued to the Governor stipulated that 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 was by the Government of India Act, 1935, designed to fill, should be reserved for the consideration of the Governor-General. However, section 53 (2) of the 1935 Act expressly laid down that the validity of anything done by the Governor should not be questioned on the ground that it was done otherwise than in accordance with the Instrument of Instructions issued to him. It will thus be seen that what was merely an administrative arrangement not open to judicial scrutiny has now been elevated to the level of a constitutional mandate, thus affecting the very validity of a legislative enactment undertaken by the State. This provision seeks to confer on the Centre a paternal role and clothes it with power of overlordship, the very thing which with the emergence of Governments in the States belonging to different political parties, has to a large extent, affected the harmonious relationship between the Centre and the States. The States are as much interested in maintaining the position and the status of the High Courts as the Centre. Therefore, the second proviso to article 200 may be omitted.

The Governor may reserve a Bill passed by the State Legislature for the consideration of the President. It is nowhere enjoined that the Governor, in making such a reference, should act on the advice of his Council of Ministers. Though constitutional experts are of the opinion that the Governor has no authority to act on his own, this interpretation is not implicit in the express provisions of the Constitution. Nor is any remedy provided if the Governor were to act on his own responsibility in making such a reference.*

It is possible (and in fact it has happened once) that a State of the Union comes to be controlled by a party in opposition to the party in power at the Centre. The Legislature of the State is competent to make any law to give shape to the political and

* Pages 98 and 99, *Federalism in India* by Asok Chanda.

economic ideology of the party, so long as it keeps within the demarcated field of its legislative authority. The provisions of the enactment may well be in conflict with the philosophy of the national Government. If the Governor were to reserve such a Bill for the consideration of the President, the question would immediately arise, should the President act on his own or the advice tendered by his Council of Ministers or that of the State? If, as has been suggested, the President must act in accordance with the advice tendered by his Council of Ministers, he may either withhold his assent or ask for a reconsideration in accordance with the message he sends. In other words the party in power at the Centre may use Presidential veto to discredit the opposition party. The growth of democratic opposition parties in the States may thereby receive a set-back, and facilitate the continuance of one-party rule throughout the territories of India.*

The important point to note is that no time limit has been prescribed for Presidential consideration. He can, if he so desires or is so advised, put the Bill into cold storage indefinitely. Secondly, there is no provision for overriding Presidential veto in respect of State legislation. His veto is absolute; it can be on any Bill referred to him, nor need he give reasons for exercising the veto. As the President acts on the advice of the Union executive, the legislative powers of the State may, to a limited extent, be interfered with by the use of Presidential veto.† Thus in theory as well as practice, the operation of the State legislative process is subordinate to the supremacy of the Union Executive.

The role of the Governor in Centre-State relations is a crucial factor. The Constitution nowhere requires that the Governor in reserving a State Bill, acts on the advice of his Council of Ministers. It is true the Governor is the constitutional head of the State. At the same time, the Constitution makes him the nominee of the President. He holds his office at the pleasure of the President, who appoints him on the advice of the Prime Minister. The Governors have been selected mostly from the ranks of the political party in power and frequently defeated politicians were given the safe haven of gubernatorial posts.

* Pages 98 and 99, *Federalism in India* by Asok Chanda.

† Page 102, *ibid.*

Though, theoretically, the Governors are supposed to be politically non-aligned, they remain basically partymen watching the political developments in their States. In such a situation, they may not heed the advice of their State cabinet in referring to the President State legislation prejudicial to their party. We recommend that articles 200 and 201 may be repealed.

Article 254 (2).—This article relates to the contrariety that is likely to arise between a Central Act and a State Act when both the Acts relate to a Concurrent subject. Even the assent of the President to a State Act on a Concurrent subject does not prevent Parliament from repealing the very State law assented to by the President. In this view we fail to understand the need for the provision contained in article 254 (2). In the light of our recommendations regarding the Inter-State Council and the placing of all Bills to be introduced in Parliament before that Council, the question of reserving the Bill for the consideration of the President is not likely to arise. In no other Federal Constitution is there any provision for Bills of the unit Legislatures being reserved for the consideration of the Union or Federal Executive. Clause (2) of article 254 may be omitted.

In a federal set up, there is no scope for one of the parties, namely, the Union to act as a sort of guide to ensure compliance with the Constitution. The High Courts and the Supreme Court have been entrusted with this function. All things considered, it may be safely stated that the provision for reservation of State Bills for the consideration of the President is a superfluity and may be said to act as an irritant in some cases. All such provisions may be omitted except the provision in article 288 (2).

Ordinance making power of the Governor:

Need for previous instructions from the President.

12. Arising out of the provisions in the Constitution requiring the reservation of Bills passed by the State Legislatures for the consideration and assent of the President is the provision prohibiting the Governors from promulgating Ordinances without instructions from the President in the circumstances specified

in the proviso to article 213 (1). According to that proviso, the previous instructions from the President are necessary in the following three contingencies :—

(1) If a Bill containing the same provisions would under the Constitution have required the previous sanction of the President for its introduction in the State Legislature.

(2) The Governor would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President.

(3) An Act of the State Legislature containing the same provisions would under the Constitution have been invalid unless assented to by the President.

The only provision in the Constitution which requires the previous sanction of the President for the introduction of a Bill in the State Legislature is the proviso to clause (*b*) of article 304 relating to trade and commerce. In dealing with this topic, we have suggested the omission of this proviso. It follows that the need for the Governor obtaining the previous instructions from the President before promulgating an Ordinance containing provisions which if embodied in a Bill would have required the previous sanction of the President for its introduction in the State Legislature would disappear.

While dealing with article 254 (2), we have pointed out that the provision is unnecessary and that it may be omitted. Consequently, in the proviso to article 213 (1), the condition that the previous instructions from the President should be obtained by the Governor before the latter promulgates an Ordinance containing provisions which if embodied in a Bill would have been reserved for the consideration of the President is no longer necessary. We have also suggested the total omission of the provisions relating to the reservation of State Bills for the consideration of the President except in cases falling under article 288 (2).

The proviso to article 213 (1) may be so modified as to restrict it to cases falling under article 288 (2).

CHAPTER V.

FINANCIAL RELATIONS.

General.

One of the most important aspects of Centre-State relations concerns finance which is required by the States for many purposes—administration, police, social services, economic progress, etc.

The constitutional division of powers and functions requires that the Centre and the States should have independent financial resources for the performance of their functions.

According to Prof. Wheare, "both general and regional governments must each have under its own independent control financial resources sufficient to perform its exclusive functions."*

2. Financial autonomy of the Centre and the States is vital to the preservation of the federal principle. It is, therefore, as necessary that the State Governments should be able to command the means of supplying their wants, as that the National Government should possess the like faculty in respect of the wants of the Union. Freedom and elasticity in the field of finance are of the utmost importance to make re-adjustments to suit the changing circumstances of a country's development. The principle of independence and its concomitant responsibility may, therefore, be regarded as the first important principle of federal finance. As Prof. Adarkar points out "the cardinal principle to be followed in financial settlements is that as far as practicable, the Federal Government and the States should be endowed with independent sources of revenue free from mutual interference and that the balancing factors should come in only marginally so as to fill up the gaps."

Adequacy and elasticity are both essential elements of federal finance. Adequacy implies sufficient resources for the Centre and the States in order to maintain certain standards of administration and perform fiscal functions in their own spheres. Elasticity implies the expansion of resources in response to the growing needs of the Government concerned.

* Page 93, *Federal Government* by Wheare (1968).

3. The practical effect of the division of financial resources has been the increasing reliance of the States on the Centre.

The main reasons for increasing dependence are—

(i) the resources for raising funds available to the States are comparatively inelastic and inadequate ;

(ii) the functions allocated to the States involve expanding responsibilities, particularly in the context of ambitious development plans and consequently increasing expenditure ;

(iii) important sources for national plan financing are foreign aid and deficit financing both tending to strengthen Central rather than State resources.

Dependence of the unit on the federal government should not be too much as it will water down the autonomy of the States and it will also encourage the growth of irresponsibility in State administration. A federal structure implies two sets of governments, autonomous in their spheres. These must accept responsibility for discharging their respective functions and exercise their powers. If centralisation makes the States more and more dependent on the federal government, a federation might end up by becoming a unitary state. The two sets of governments must be allocated powers responding adequately to the increasing needs of their functions.*

The following observations of the Study Team appointed by the Administrative Reforms Commission to go into Centre-State Relationships are apposite :

" In the states, excessive dependence on the centre tends to produce irresponsibility and operational inefficiency. At the centre, dominant financial power in relation to the states gives central authorities exaggerated notions of their importance and knowledge and does not allow sufficient place to the points of view of the states. It is important, therefore, that the degree of financial dependence of the states on the centre should be reduced to the minimum, because that minimum would be adequate from the point of view of giving the centre controlling powers in the context of ensuring national integration." (Page 23, Volume I)

* Page 8, *Union-State Financial Relations in India* by S. M. Veeraraghavachar.

4. The allocation of finances made by the Constitution between the Centre and the States has given rise to two main complaints :

(i) Constitutional division of finance is not fair to the States ; and

(ii) In the distribution of the taxes collected on behalf of the States and also in the matter of discretionary grants by the Union to the States, there is scope for discriminatory treatment.

Though the States are in charge of most of the welfare activities, their sources of raising funds are comparatively inadequate. They have to depend on the Centre for grants or overdrafts. This chronic indebtedness and dependence on the Centre's charity gradually make the States ineffective and they develop a tendency not to take any responsibility but to throw the blame on the Centre for their defaults.

5. It is very doubtful if the financial implications of a developing society were realised when the Constitution was made. It is clear now in retrospect that ampler resources should have been placed at the disposal of the States instead of making them so dependent on grants and loans from the Centre—grants and loans which they seem to be able to extract from the Centre under irresistible political pressure while for the purposes of achieving balanced regional development, it is very necessary that the Centre retain a distributable pool of resources.*

6. The correction of the imbalance between the States' aspirations and resources, calls for an amendment of the relevant articles of the Constitution so as to vest in the States more adequate sources of finance to match their developmental needs and aspirations. Responsibility for development, and the power to discharge it, would then be better matched and recourse to grants from the Centre would be rendered largely unnecessary, thus enabling the Centre to reserve their use to the more justifiable cases of contingent assistance.†

" Recognising that the needs of the states increasingly outstrip their resources and that funds have to be devolved by the centre in some form or other it is only realistic to grant the case

* *See* also the view of Thiru Bhabatosh Datta in his article captioned " Need for re-examination of Centre-State financial relations " published in the Supplement to *Capital*, dated the 31st December 1970.

† Working Paper No. III-D by Dr. C. D. Deshmukh presented to the National Convention on Union-State Relations held in New Delhi in April 1970.

for extending the base of devolution and bring other taxes also within the ambit of shareability. This will also enable rationalisation in tax levy and administration." (Report of the Study Team appointed by the Administrative Reforms Commission, pages 41-42, Volume 1)

7. The taxes which the Union could levy are specified in entries 82 to 92-A of the Union List and those leviable by the State are specified in entries 45 to 63 of the State List. Entry 44 of the Concurrent List refers to stamp duties other than judicial stamps but not including rates of stamp duty. Three items of taxation specified in the Union List are meant for the exclusive use of the Union. They are, (1) duties of customs including export duties (entry 83), (2) corporation tax (entry 85) and (3) taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies (entry 86). Of the remaining heads of taxation leviable by the Union, taxes on non-agricultural income have to be distributed between the Union and the States. Duties of excise on goods such as tobacco which are not compulsorily distributable between the Union and the States may, if Parliament by law so provides, be shared by the Union with the States. This in fact is so far being shared by the Union with the States on the basis of the recommendations of the Finance Commissions.

8. When dealing with the distribution of legislative powers of taxation, we had occasion to notice that the power of levying excise duties on medicinal and toilet preparations containing alcohol, etc., under entry 84 of the Union List was under the 1935 Act vested in the units. Similarly, the units had the exclusive power to levy taxes on transactions in stock exchanges and futures markets, on the sale or purchase of newspapers and advertisements published therein and on the sale or purchase of goods in the course of inter-State trade or commerce and all these levies have now been included in entries 90, 92 and 92-A of the Union List. We will presently deal with these four entries.

9. It is a salutary principle of federal finance that a statutory devolution of resources on the States, more or less automatic and not based on the discretion of the Centre, is essential for the

preservation of State autonomy as it would considerably reduce, if not remove altogether, financial dependence on the Centre.

The necessity for expanding the area of assured devolution has been recognised by the Administrative Reforms Commission Study Team. The following extract from their Report throws much light on this aspect:—

"Financial assistance flows from the centre to the states in the main through two channels. One is the channel of what might be called assured devolutions, where the states are not left in any kind of doubt about what they are going to get and their share goes to them regardless of what they spend it on and how they perform. In this class fall divisible taxes and grants-in-aid under Article 275. One of the features of this sector of assured devolutions is that the amounts are determined on the basis of a semi-judicial adjudgment by the Finance Commission. The other channel is where executive and discretionary factors operate, and while the amounts transferred to the states are large, their actual quantum remains uncertain and subject to year to year fluctuations. Plan grants fall in this category. A valid method of decreasing the dependence of the states on the centre would be to see that the states get more through assured devolutions." (Page 24, Volume I)

"....we are of the view that the base of devolution should be widened by including more central taxes in the list of shareable taxes." (Page 38, Volume I)

"As pointed out earlier, a method has to be devised of expanding the area of assured devolutions, more particularly if the proposed re-arrangement of functions between the Finance and the Planning Commissions is not to operate to the detriment of the states. Successive Finance Commissions have recommended progressively larger devolutions of taxes to the states in view of their expanding range of functions, particularly in the economic field. Nevertheless, all except a few states continue to need

grants-in-aid to fill their non-plan revenue deficits. It, therefore, appears necessary :

(i) to secure for the states a larger devolution of taxes than at present, so that, in actual practice, the need for grants-in-aid under Article 275 either disappears or is minimised. This would suggest—

(*a*) widening the base of devolution ; and

(*b*) fixing the states' share of divisible taxes at sufficiently high levels ;

(ii) to bring about a fuller exploitation of the assigned taxes mentioned in Article 269 of the Constitution ; and

(iii) to safeguard the interests of the states in the matter of such of the central taxes as concern them and to have an institutional forum for consultations between the centre and the states to facilitate an appreciation of common problems."

" One way of reducing the excessive dependence of the states is by increasing devolutions. The normal essential expenditures of states have been increasing and will continue to do so at a fast rate. It will, therefore, have to be examined whether there is not a case for widening the base of devolution by extending shareability to other taxes." (Page 41, Volume I)

Taxes Exclusively Appropriated by the Union.

Corporation Tax.

10. We may first consider the items of taxation the proceeds whereof are wholly appropriated by the Centre, namely, duties of customs including export duties, corporation tax and wealth tax. In the Report of the Union Constitution Committee, dated the 4th July 1947, the proposal was that customs, export duties and taxes on companies should, in addition to some other items, be levied and, if necessary, be distributed. In the Memorandum on the Indian Constitution as adopted by the Constituent Assembly in July 1947 this provision was reproduced. The Memorandum was considered by the Constituent Assembly on the 30th July 1947. Consideration of this provision was postponed as suggested by Sir N. Gopalaswami Ayyangar, who stated that it was intended to appoint an Expert Committee to undertake a detailed investigation into the whole question of distribution of revenues between the Union and the federating units.* In the Draft Constitution

* Page 987, CAD IV.

prepared by the Constitutional Adviser, Sir B. N. Rau, in October 1947, provision was made for the optional sharing by the Centre with the units of export duties. In the meantime, an Expert Committee was appointed as suggested by Sir N. Gopalaswami Ayyangar. The then Provinces in their representations to the Expert Committee urged the provincialization of some of the central taxes and inclusion of more central items of revenue in the divisible pool as well as enlargement of their share in the taxes which were divisible under the 1935 Act. Madras was one of the Provinces which urged that corporation tax and export duties should be included in the divisible pool. The Expert Committee submitted its Report in December 1947. In paragraph 38 of its Report, the Expert Committee suggested that the units should be assigned a portion of the net proceeds of the corporation tax also. But the Committee did not favour the division of the proceeds of customs, export duties and taxes on the capital value of assets.

11. The *Drafting Committee* did not accept the recommendation of the Expert Committee regarding corporation tax. Members of the Constituent Assembly sent a number of amendments to the provisions contained in the scheme of financial relations between the Central Government and the units. Thiruvalargal K. Santhanam, M. Ananthasayanam Ayyangar, T. A. Ramalingam Chettiar and B. Gopala Reddi, the then Finance Minister of this State, and Thirumathi Durgabai suggested amendments so as to provide that the proceeds of the corporation tax also should be shared. The draft financial provisions were discussed in great detail at a conference of the Premiers (Chief Ministers) in July 1949. At the Conference, the then Finance Minister of Madras desired that corporation tax should also be included in the divisible pool. This suggestion was opposed by Thiru K. C. Neogy on the ground that the corporation tax was never intended to be shared between the Centre and the Provinces under the 1935 Act. The question again cropped up when the provisions were considered by the Constituent Assembly * in August 1949. Thiru B. Das urged that the corporation tax also should be shared by the Union with the States. It will thus be seen that from the very beginning persistent demand has been made particularly by the representatives of

---

* *Pages 210–223, CAD IX.*

this State that the corporation tax should be made divisible between the Union and the States. It is interesting to note that the Joint Parliamentary Committee in considering the levy of the corporation tax suggested that the corporation tax should be extended to the then Indian States after ten years from the date of formation of the federation, a right being given to any State to pay to the Central Government an equivalent lump sum contribution, and empowering the Indian State itself to impose the corporation tax. This was a special concession suggested by the Joint Parliamentary Committee in the then prevailing situation.

12. All the States have been complaining about the exclusion of the corporation tax from the divisible pool. They have been pressing their demands before the Finance Commissions for the inclusion of the corporation tax in the "tax on income". The Third Finance Commission has stated, "All the States have pointed out that, as a result of a change brought about in the Income-tax Act by the Finance Act of 1959, the income-tax paid by companies is now classified as corporation tax and is thus excluded from the pool of income-tax hitherto available for distribution" and that the States have represented that "this has deprived them of an expanding source of revenue to which they had hitherto a constitutional entitlement." The Third Commission made it clear to the State Governments that the recommendations which the Commission would make should necessarily be in consonance with the provisions of the Constitution and the terms of reference. The demand was again pressed before the Fourth Finance Commission. It was represented by the States that what the framers of the Constitution had intended to be a flexible and expanding source of revenue to the States had ceased to have the significance that was once contemplated. It was also represented to the Commission that while the collections from corporation tax had increased by well over 600 per cent in the course of 12 years, the corresponding growth in the divisible pool of income-tax was less than 50 per cent. The Fourth Commission pointed out: "Due note should also be taken of the States' representation about the need for abating in some measure the loss sustained by them, consequent upon the reclasssification of income-tax paid by companies." The matter was again

raised by the States before the Fifth Commission. Some of the States suggested that the net proceeds to be divided between the Union and States should include a part or the whole of the proceeds of corporation tax. The Fifth Commission disposed of this contention of the States by inviting attention to the increased share allotted to the States by the Third and Fourth Commissions and stated that no further increase in the States' share on this ground only was necessary. Under one of the terms of reference to the Fifth Commission, it was required to make recommendations regarding the problem of unauthorised overdrafts of certain States with the Reserve Bank of India. While dealing with this problem, the Fifth Commission again adverted to the sharing of the corporation tax. Some of the State Governments represented to the Commission that the inadequacy of their resources has been accentuated by the unilateral action taken by the Central Government which has deprived them of their legitimate share out of proceeds from income-tax on companies. The Fifth Commission, while admitting that the classification of income-tax paid by companies as corporation tax has resulted in contraction of the divisible pool, has stated that the Central Government gave the States a compensatory grant to make good the loss. It has again invited attention to the increased share of income-tax fixed by the Third and Fourth Commissions. It will thus be seen that the States have been agitating for a long time for the division of the proceeds from the corporation tax between the Union and the States.

13. Thiru Amal Ray in his article entitled *Federalism and Planning in India : Their mutual impact* in Vol. III, No. 4 (Oct.-Dec. 1969) of the *Journal of Constitutional and Parliamentary Studies* has stated that it is necessary to bring corporation tax into the divisible pool through a suitable amendment of the Constitution. He points out that the increase in income arising from the progress of developmental planning will largely be in the corporate sector of the economy. that the plan is a joint national enterprise in which the Centre and the States are partners and that, therefore, both of them have equally the claim to fruits of development.

Thiru A. K. Chanda says:

*"The yield of corporation tax has now outstripped that of income-tax (including surcharges of approximately Rs. 110 millions) grossing respectively Rs. 2,220 millions and Rs. 2,180 millions. The super profits tax is expected to yield another Rs. 200 millions. In other words, leaving aside taxes like wealth and gift tax, the taxes on income are expected to yield a net of over Rs. 4,000 millions a year of which Rs. 1,680 millions only will form the divisible pool. No wonder, therefore, that the states cast a covetous eye on the yield of taxes on incomes and adduce various arguments to bring within the purview of distribution excluded items."

†" A reclassification of income-tax in 1961 had also transferred income-tax on companies to corporation-tax adding to the revenues of the Centre, eroding the divisible pool. As expected, this has been a matter of bitter complaint by the States; some going to the extent of suggesting that it was a violation of the relevant constitutional provision. This, of course, was a puerile plea, rejected out of hand by the successive finance commissions."

Again, Thiru G. S. Bhattacharyya, speaking at the Indian Parliamentary Association Symposium on Centre-States Relations held in New Delhi on the 3rd May 1970, has urged that the corporation tax also should be made compulsorily divisible. According to him, under the existing social system, it is the corporations or companies which are becoming more and more dominant in our economy and if taxes on companies are left out of the States' sphere and are assigned exclusively to the Centre, the States are rendered all the more weak.

14. The revenue derived from corporation tax has outstripped the revenue derived from the levy of tax on income of individuals. It is the corporate sector which contributes a substantial portion to receipts under the Income-tax Act. In pith and substance,

* Page 243, *Federalism in India* by Asok Chanda (1965).

† Page 140, *Journal of Constitutional and Parliamentary Studies*, Vol. III, No. 4.

the corporation tax is a tax on income. This will be clear from the definition of the term " corporation tax" in article 366 (6). The definition begins by saying that it means any tax on income and specifies the other requisites. Our suggestion is not that the entire corporation tax should be allocated to the States, nor that this item should be transferred to the State List. What we recommend is that the corporation tax also should be treated on the same footing as income-tax.

Our recommendation on this point finds support in the Report of the Study Team of the Administrative Reforms Commission. The Study Team has suggested that it will have to be considered whether the corporation tax should not be shared with the States and that the question of sharing corporation tax will have to be viewed in the light of the exclusion from the divisible pool of income-tax paid by companies. The Study Team has recommended the setting up of an expert body to examine this question and as one of the possible items for examination by such an expert body, the Study Team has suggested the sharing with the States of the net proceeds of income-tax paid by companies.

Customs including Export Duties.

15. Customs and export duties are levied not on the articles as such. The occasion for the levy is the movement of the articles, that is, import or export. It may be that the basis of levy is the valuation of the article concerned. But the point to be noted is that the incidence is on the transaction. The customs and export duties are similar to excise duties. Excise duties are now distributable, though not compulsorily and successive Finance Commissions have determined the share of the various excise duties.

16. Under section 140(1) of the Government of India Act, 1935, export duties although levied by the Federation, were divisible among the Centre and the units if a Central Act so provided. But as already pointed out by us earlier on, the Expert Committee appointed by the Constituent Assembly to consider the financial provisions to be incorporated in the Constitution expressed itself against sharing of export duties. At one stage, the Drafting Committee agreed with this view of the Expert Committee.

At a subsequent stage, the Drafting Committee itself proposed an amendment providing that export duties should be divisible, if Parliament so provides. It was pointed out that the amendment was meant to rectify an omission since the article was intended to follow the then existing provision contained in section 140(1) of the 1935 Act. But the Finance Ministry took a contrary view holding that export duties should be excluded from the divisible pool. At the Conference of the Premiers convened by the Drafting Committee, the Premier of U.P. and the then Finance Minister of Madras pleaded for the continuance of the position as it then obtained under the 1935 Act whereby export duties could be distributed among the units, if the Federal Legislature so desired. The Premier of Assam went a step further and demanded that the sharing of export duties should be made obligatory. However, Thiru K. C. Neogy and the Central Ministry of Finance expressed their opposition to the suggestion. The discussion was wound up with the observation that the general consensus of opinion seemed to be in favour of excluding the export duties from the divisible pool. It will thus appear that the demand for the allotment of a portion of the export duties to the units has been voiced even at the time of the framing of the Constitution.

17. It will be only reasonable, if the proceeds from the export and customs duties also are distributed between the Union and the States. These are the duties which yield considerable revenues and with increased economic growth under the Five-Year Plans, the yield from customs and export duties will also increase. There is no reason why the States should not have a share in those two duties. A suggestion has been made that customs duty may be transferred to the States. In the interests of inter-State trade and trade with foreign countries it is not desirable to transfer customs duty to the State List. We, therefore, recommend that the export and customs duties should be compulsorily distributed between the Union and the States.

Tax on the Capital value of Assets.

18. The other tax levied and appropriated by the Union in its entirety is tax on the capital value of the assets exclusive of agricultural land. Although entry 86 is specific and excludes agricultural lands from its purview, Parliament has recently provided

for the levy of wealth tax on agricultural assets also. The tax on the capital value of assets is somewhat similar to estate duty and succession duty. Estate and succession duties, though levied and collected by the Union, are to be entirely appropriated by the States. The estate duty on immovable property is being allocated to the States on the basis of location. This is in accordance with the recommendation of the Second Finance Commission which has been followed by the three subsequent Commissions. We would recommend that the taxes mentioned in entry 86 of the Union List should be made divisible.

Taxes included in the Provincial Field under the 1935 Act but included in the Union Field under the Constitution.

19. We have so far dealt with taxes which are levied and collected by the Union and the entire proceeds whereof are appropriated by it exclusively. As indicated earlier in this Chapter, the Union List contains at least four entries which under the 1935 Act were in the Provincial field. They are entries 84, 90, 92 and 92-A. In the Chapter dealing with distribution of legislative powers, we have dealt with the levy of excise duties on medicinal and toilet preparations containing alcohol under entry 84. The reason adduced at the time the Constitution was drafted for putting this item in the Union List cannot be said to be conclusive, nor is it convincing. Excise duties on alcoholic liquors for human consumption are leviable by the State. There seems to be no justification for the exclusion of excise duties on medicinal and toilet preparations containing alcohol from the purview of the States. This item may well be transferred to the State List.

20. Entry 90 relates to taxes other than stamp duties on transactions in stock exchanges and futures markets. We have already pointed out in the Chapter relating to distribution of legislative powers that stock exchanges and futures markets were under the 1935 Act, treated as falling within entry 27 of the Provincial List. Under the Government of India Act, 1935, levy of sales tax on newspapers and advertisements in them was exclusively in the Provincial field. The two levies under entries 90 and 92 are dealt with in another place in this Chapter,

21. Entry 92-A is consequent on clauses (2) and (3) of article 286 In pursuance of the power conferred by the entry and the article mentioned above, Parliament has enacted the Central Sales Tax Act, 1956 (Central Act 74 of 1956). According to section 9 of Central Act 74 of 1956, the tax payable by any dealer under that Act on sales of goods effected by him in the course of inter-State trade or commerce is levied and collected by the Government of India, but the proceeds in any financial year of any tax including any penalty levied and collected under the Act in any State should be assigned to that State and retained by it. The levy is on transactions taking place in the course of inter-State trade or commerce. No modification of either the constitutional provision or the Central Act bearing on the subject, is necessary. The present arrangement may continue.

22. We have so far dealt with only one particular aspect of entries 84, 90, 92 and 92-A of the Union List, that is, the justification or otherwise for their continued retention in the Union List. In dealing with entry 84, we have confined ourselves only to one particular part of the entry, namely, levy of excise duties on medicinal and toilet preparations containing alcohol. The above mentioned entries have to be considered from another angle also. Whereas excise duties on medicinal and toilet preparations containing alcohol mentioned in entry 84 and stamp duties mentioned in entry 91 are entirely appropriated by the State, the other duties of excise mentioned in entry 84 are not compulsorily divisible between the Union and the States and their sharing is, under article 272, dependent on the will of Parliament (expressed through law). The taxes mentioned in entries 90, 92 and 92-A and those mentioned in entries 87, 88 and 89 form one class in that the net proceeds of those taxes in any financial year are, under article 269, assigned in their entirety to the States to be distributed among them. Thus, we have to consider the issue in relation to articles 272 and 269.

EXCISE DUTIES.

23. Duties of excise on tobacco and other goods manufactured or produced in India, leviable under entry 84, subject to the exceptions specified in that entry, may, if Parliament by law so provides, be shared between the Union and the States under article 272. The Expert Committee on the financial provisions

to be incorporated in the Constitution recommended that 50 per cent of the net proceeds of the excise duty on tobacco should be distributed to the units. This recommendation of the Expert Committee was not accepted. Accordingly, the Drafting Committee made a provision in the Draft Constitution for the permissive sharing of excise duties with the States. While commenting on the draft article, Thiru B. Gopala Reddi suggested the transfer of all duties of excise from the Union to the State List and Thiruvalargal K. Santhanam and M. Ananthasayanam Ayyangar and Thirumathi Durgabai suggested that the whole of the Union duties of excise, although levied and collected by the Union, should be paid to the States concerned. When this article was considered by the Constituent Assembly, the then Premier of Assam, Thiru Gopinath Bardoloi, desired that the sharing of the proceeds contemplated in the provision should be made obligatory and not dependent on legislation by Parliament.* Two other members supported this view.† But the provision was adopted in the present form. It will thus appear that the demand that the sharing of the excise duties under article 272 should be mandatory and not permissive, has been put forward even at the earlier stages.

24. The Finance Commissions have recommended a more extensive use of article 272 for affording assistance to the States. The first three Finance Commissions had taken the view that having regard to the growing requirements of funds by the States for developmental and other essential services, recourse to permissive sharing contemplated under article 272 was not only justified, but even necessary. The Fourth Commission endorsed this view. In a Supplementary Note, the Chairman of the Fourth Commission has referred to the possibility of making a constitutional amendment placing the excise duties on the same footing as income-tax, that is, making the excise duties also compulsorily divisible between the Union and the States. The Fifth Commission has dealt with this point in paragraph 4·3 at page 31 of its Report. The Commission states that the sharing of Union excise duties enables both the Union and the States to participate in what elasticity the divided taxes possess, and that the payment of grants under article 275 may be required to a lesser extent.

* Page 228, CAD IX.
† Pages 231 and 237, *ibid.*

25. It will be seen from the reports of the five Finance Commissions that the number of commodities subject to excise duties has been on the increase. The share of the States in the excise duties also has been increased by the successive Finance Commissions. But special excise duties and regulatory duties and cesses are excluded from the divisible pool. The Fifth Finance Commission has recommended the division of special excise duties for the years 1972–73 and 1973–74. The Fourth and the Fifth Finance Commissions have stated that special excise duties should not be the rule but the exception. Regulatory excise duties and cesses have always been placed outside the divisible pool. *Excise duties are more in the nature of sales tax and there is no reason why special and regulatory excise duties should be excluded from the share of the States. Thiru G. S. Bhattacharyya, speaking at the Indian Parliamentary Association Symposium on Centre-States Relations held in New Delhi on the 3rd May 1970, has stated that in his opinion the excise duties should be distributed compulsorily among the States. Answers to this question received by the Committee suggest that the distribution of excise duties among the States and the Union should be made mandatory. We recommend that article 272 may be amended so as to make the division compulsory in order that the excise duties, special, regulatory or otherwise, may all be shared with the States.

26. "Additional duties of excise" is a related subject. This is being levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957). According to the proviso to paragraph 2 of the Second Schedule to that Act, no sum will be payable to any State under the Act, if sales tax is levied in that State on the goods concerned. This arrangement whereby the States agreed to surrender sales taxes and substitute them by additional excise duties levied by the Union was taken at a meeting of the National Development Council. Thiru K. Santhanam, in one of his lectures on Union-State Relations in India, delivered in March 1959 under the auspices of the Indian Institute of Public Administration, has described the manner in which the National Development Council made this decision. He says :

---

* Thiru A. K. Chanda at page 145, Volume III, No. 4 (October—December 1969) of the *Journal of Constitutional and Parliamentary Studies*.

"I believe the decision to surrender these taxes and substitute them by additional excise duties was taken at a single sitting (of the National Development Council) at which many of the Chief Ministers had not even fully consulted their own Cabinets. Actual facts are not known as they are necessarily State secrets. But this is the kind of impression which the public have got because no attempt was made to canvass the opinion of the State legislatures and there was no discussion in the Press."*

The Fourth Finance Commission has described this "scheme of centrally levied additional duties of excise in replacement of States' sales taxes combined with a distribution scheme" as "essentially in the nature of a tax rental agreement". The Fifth Finance Commission has referred to the general opposition of the States to the levy of additional duties of excise and has stated that there is no scope for extending the arrangements to other items of duties in the foreseeable future. It has also stated that it would not be desirable to continue the scheme unless the Union and the States agree to its continuance with suitable modifications. It has suggested the initiation of discussions in this behalf. It is reported in *The Hindu*, dated the 12th June 1970, that all the Chief Ministers have at a meeting of the National Development Council demanded the abolition of additional excise duty and re-imposition of sales tax and that the matter is being examined by a committee of all Chief Ministers with the Deputy Chairman of the Planning Commission as the Chairman of the committee. The same report quotes Thiru P. C. Sethi, the then Union Minister of State for Finance, as saying that if any agreed formula was not evolved and the Chief Ministers insisted on the imposition of sales tax, the Centre would not go against the proposal. Subsequently, the Committee of Chief Ministers is reported to have agreed to the continuance of the levy of the additional excise duties in lieu of State sales tax subject to the condition that the rate should be increased to 10·8 per cent (*Vide The Hindu*, dated the 29th December 1970).

27. Even if additional excise duties are abolished and States are permitted to re-impose sales tax on the goods in question, the levy by the States will be subject to restrictions. Under

* Pages 46-47, *Union-State Relations in India* by K. Santhanam.

section 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the taxes payable under the sales tax law of a State in respect of sale or purchase of declared goods even inside the State should not exceed 3 per cent of the price and such tax should not be levied at more than one stage. Section 14 of the Act specifies the declared goods and they include coal, cotton, cotton fabrics, hides and skins, iron and steel, jute, sugar, tobacco, silk fabrics, etc. In other words, even sales or purchases taking place within a State will be subject to the restrictions mentioned above. Thus, the tax both on inter-State sales as well as intra-State sales, has to conform to the conditions stipulated in the Central Act of 1956. If the States are to get the full benefit of the abolition of the additional excise duties, it is necessary that these restrictions should be removed.

28. Sections 14 and 15 of the Central Act are relatable to clauses (2) and (3) of article 286 of the Constitution. Those clauses empower 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) of the article. Parliament is also empowered by law to declare goods to be of special importance in inter-State trade or commerce, and once this declaration is made, the sales tax law of a State will be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament by law specifies. Sales tax is the only source of revenue available to the States which can be said to be an expanding one. The power of Parliament under clause (3) of the article should not be exercised except in consultation with the States; nor should any fresh declaration be made under the clause without such consultation. We have separately recommended the setting up of the Inter-State Council charged with the function of scrutinising all Bills affecting one or more States before their introduction in Parliament. This recommendation, if implemented, will secure the object behind our recommendation relating to article 286 (3).

The Chairman of the Fourth Finance Commission, in his Supplementary Note, has referred to the representations made to the Commission to the effect that sales tax on a number of commodities should be substituted by additional excise duties

on the ground that this would simplify the problem of collection. He has also stated that this course may not find favour with the States. In that context, he has referred to the view that if by an amendment of the Constitution all excise duties are made shareable on an obligatory basis, the States might agree to the merger of sales tax and excise duties.

Taxes levied and collected by the Union but assigned to the States.

29. We may now take up the duties and taxes leviable under entries 87, 88, 89, 90, 92 and 92-A. These duties and taxes are, under article 269, levied and collected by the Government of India, but are assigned to the States. This article corresponds to section 137 of the Government of India Act, 1935. The Joint Parliamentary Committee stated that section 137 was necessary for securing uniformity in the rate of tax. These levies are really sources of State revenue, but they have been assigned to the Union List in order that there may be uniformity of law regarding their levy, rates, incidence and collection. Of the items mentioned in article 269, only two levies are currently in force. They are estate duty and taxes on the sale or purchase of goods in the course of inter-State trade or commerce. The States have been complaining before the Finance Commissions that the assigned taxes mentioned in article 269 have not been adequately exploited. The Fourth Finance Commission has referred to this complaint and has stated that each State illustrated this view with what it thought was an apt case. The Commission also refers to the feeling of some States that under the Constitution as it now stands, a temptation on the part of the Union Government to neglect the State's needs is inescapable. It was also urged before the Commission that a general review of inter-governmental financial relations to be followed by constitutional amendment, if necessary, should be undertaken. The Commission again refers to a general feeling favouring more frequent consultations among the States and between the States and the Union in all matters of common financial interest. The Study Team appointed by the Administrative Reforms Commission to go into Centre-State Relationships has suggested in 1967 a comprehensive examination of the possibility of exploiting the taxes mentioned in article 269 and the

repercussions that they are likely to have on the country's economy. It recommended the entrustment of this examination to a Finance Inquiry Commission or the next Finance Commission. The Fifth Finance Commission was requested to make recommendations as to the scope for raising revenue from the taxes and duties mentioned in article 269 and the Commission has in its Report devoted an entire Chapter to this question. It may be advantageous to examine in the light of the recommendations of the Fifth Finance Commission (hereafter in this Chapter referred to as the Commission) on this topic, the feasibility of levying the taxes mentioned in article 269 other than those which are already being levied.

(1) Succession duties.

The Commission has stated that there would be no particular advantage in levying succession duties in addition to estate duties. The reason adduced by the Commission is that both succession duties and estate duty fall on the same object, namely, property passing on the death of the owner. As pointed out by the Commission itself, succession duties are leviable on the parts of an estate devolving on each of the successors, while the estate duty is levied on the estate in its entirety. The incidence in the two cases is different. The Commission apparently was of the view that the same object should not be taxed twice. This argument by itself is no ground for not levying the succession duties. Under the existing system of taxation there are instances where the same object is taxed more than once, although by different authorities. To give two instances, excise duties and sales tax are levied on one and the same object. Again, immovable property is subjected to levy of property tax by the local authority, urban land tax, if any, levied by the State Government and again to wealth tax and income-tax. Therefore, we are of the opinion that the question of levying succession duty requires examination in geater detail.

(2) Terminal taxes on goods or passengers carried by railway, sea or air.

(a) *Terminal tax on goods carried by railway.*—The only reason given by the Commission against the levy of terminal tax on goods carried by railway is that it would be administratively inconvenient

as it would involve collection of tax at different rates according to destinations and separate accounting of receipts to be transferred to each State. It has on the other hand stated that it would be far simpler for municipal bodies to suitably modify their octroi or terminal tax rates or preferably impose some levy on the sale or consumption of the goods entering their territorial limits. The Commission has started with the assumption that the proceeds from this tax would go in their entirety to the local bodies concerned and that the State Governments might not derive any benefit therefrom. We are not sure as to how far this assumption is justified. Even if it be assumed that the proceeds will be allotted to local authorities, it will to that extent relieve the State of its financial obligation in relation to the local bodies. This has been recognised by the Commission also. The levy and collection of any tax particularly a tax of the class specified in article 269 which has to be allotted to the States necessarily involves some amount of administrative inconvenience and accounting. But this cannot by itself form any justification for not levying the tax.

(*b*) *Terminal tax on passengers carried by railway.*—The Commission has estimated that the levy is likely to yield Rs. 5 crores per annum. But it has stated that in view of administrative difficulties and inconvenience involved in collection and the need to levy a corresponding tax on passengers travelling by road, it would not be worthwhile to levy the tax. Our views in relation to the levy of terminal tax on goods carried by railway apply here also. The road transport is already subject to a number of levies in this State. It is necessary at least as an experiment to levy the tax and if after a period of five years it is found that movement of passengers by railway has been adversely affected by the levy of the tax due to the non-levy of a corresponding tax on road transport, then it will be time to reconsider the issue. But the suggestion that the levy should not be made at all on the only ground that the States should simultaneously provide for a similar levy on road transport does not seem to be convincing. In fact there is in force a levy of terminal tax on passengers carried by railway from or to certain places of pilgrimage or where fairs, *melas* or exhibitions are held, namely, the Terminal Tax on Railway

Passengers Act, 1956 (Central Act 69 of 1956). The Commission has referred to this Act also. Our view gets strengthened by the levy which is already in force. All that is required is to expand this levy to include all other passengers carried by railway..

(c) *Terminal tax on goods and passengers carried by sea.*— The Commission has stated that if a terminal tax is levied at Rs. 2 to Rs. 5 per deck passenger and Rs. 10 to Rs. 15 per saloon or cabin passenger, the yield is not likely to exceed half a crore of rupees and that, therefore, it would not justify the imposition of such tax on this mode of transport only. This recommendation has to be read with its recommendation relating to terminal tax on goods and passengers carried by railway. In the view we take of the other two levies, we are of the opinion that there is justification for resorting to the levy of terminal tax on both goods and passengers carried by sea. Another reason given by the Commission against the levy of terminal tax on goods and passengers carried by sea is that goods carried by sea are already subject to port charges and other fees. A similar argument in relation to the levy of succession duties has been dealt with by us earlier in this Chapter.

(d) *Terminal tax on goods and passengers carried by air.*— The Commission has referred to the argument of the Government of India and the Air Corporations that there is no scope for this levy at present, particularly in the context of the need to attract more foreign tourists and to promote civil airlines activity. While admitting that a moderate terminal tax on passengers carried by air cannot be ruled out, it has not recommended the levy on the ground that the annual yield will only be 2½ crores. This argument also is not very convincing. It is not a question of the yield alone which matters. Once the levy is brought into force, the scope for further increase and alteration will always be there. The thing is to initiate the move. As regards goods carried by air, the Commission has stated that it would not be advisable at this stage to levy the tax as the mode of transport of goods by air is still not sufficiently developed. Transport of goods by air has come to stay. There is no reason why this field of taxation should not be exploited or at least a beginning made.

(3) Taxes on Railway Fares and Freights.

(i) *Tax on railway fares.*—Tax on railway passenger fares was levied by the Railway Passenger Fares Act, 1957 (Central Act 25 of 1957), and the proceeds of the tax were assigned to the States at the percentages laid down in section 5 of the Estate Duty and Tax on Railway Passenger Fares (Distribution) Act, 1957 (Central Act 57 of 1957). The tax was abolished by the Railway Passenger Fares (Repeal) Act, 1961 (Central Act 8 of 1961), which repealed Central Act 25 of 1957 and modified Central Act 57 of 1957, so as to confine the latter Act to the distribution of estate duty only. Central Act 57 of 1957 itself was repealed by Central Act 9 of 1962, which at present provides for the distribution of the net proceeds of the estate duty among the States.

The Second Finance Commission was, for the first time, requested to make recommendations as to the principles which should govern the distribution of the net proceeds of the tax levied under Central Act 25 of 1957. It accordingly decided that the proceeds of the tax should be distributed among the States in the ratio of passenger earnings to be determined with reasonable accuracy by allocating passenger earnings among States on the basis of railway route mileage within each State with due allowance for variation in density of traffic between the various railway zones and as between the various gauges in each zone. The Second Commission suggested that the proceeds of the tax be distributed in the ratio of Statewise earnings so worked out and indicated each State's share as a fixed percentage applicable for five years from 1957–58.

As already stated, the tax on passenger fares was abolished by legislation in 1961, after the constitution of the Third Finance Commission. But the Union Government decided to make to the States an *ad hoc* grant of Rs. 12·5 crores per annum for the quinquennium 1961–66 representing the average of the actual collections for the two years 1958–59 and 1959–60. In compliance with one of the terms of reference, the Third Finance Commission suggested that the distribution should be on the principle of compensation to place the States broadly on the same footing as before. The Third Commission has also referred to the complaint of the States that they have been deprived of an expanding

source of revenue to which they were legally entitled under article 269. The States represented to the Commission that the *ad hoc* grant, being a discretionary one, could be withheld at any time.

The Fourth Commission agreed with the view of the Third Commission that the grant should be on the basis of compensation. The States almost unanimously represented to the Fourth Commission that the fixation of the grant at a particular level has deprived them of a potentially elastic source of revenue and have urged that the level of grant should be raised in the proportion in which the railway passenger earnings have increased since the merger. Again, the States represented to the Fifth Commision that the system of a fixed annual grant has deprived them of a potentially elastic source of revenue and urged that the quantum of the grant should be suitably increased each year having regard to the growth in railway earnings from passenger fares. Some States suggested the re-introduction of the tax as an alternative.

The Fifth Commission, while dealing with these representations, stated that the quantum of the grant would have been higher than Rs. 12·5 crores, if it had been fixed on the basis of actual tax collections during the three full years in which the tax was in existence and that the subsequent revision in 1965 also was not related to the increase in total passenger earnings, but was based on the increase in passenger traffic. The Commission has stated that due to the substitution of the tax by a fixed grant, the States do not get a benefit proportionate to what they could have expected from the tax which was levied under article 269, the proceeds of which are wholly assignable to the States. It considered the desire of the States for re-imposition of the tax to be legitimate. But the Commission went on to point out the unsatisfactory state of railway finances and their increased expenditure commitments and concluded by saying that there is no scope for the re-imposition of the tax on railway passenger fares. It, however, suggested that the question may be reviewed by the Union at a more propitious time.

Like all other taxes specified in article 269, the tax on railway fares is intended solely for the benefit of the States. The unsatisfactory state of railway finances can be no reason why the States

should be deprived of a constitutional right. The tax levied and collected goes to the State treasury. We would, therefore, urge the re-imposition of the tax. As regards the increase in the quantum of the grant in lieu of the tax, the Commission has made a pious plea to the Railway Convention Committee to take into account the views of the States and those of the Railways. This is a tax which was in force and there is no justification whatever for withdrawing it. This is a glaring instance of a power vested in the Union to be exercised for the sole benefit of the States, being used to the detriment of the States.

(ii) *Tax on railway freights.*—Here too, the Commission has not given convincing reasons for the non-levy of the tax. It has referred to the position of the railway finances and to the fact that some essential articles like foodgrains, coal, etc., may have to be exempted. In any taxation measure, exemptions are inevitable, but there is no justification for desisting from the levy on that ground. As regards the railway finances, it has to be pointed out that it is a commercial concern unlike the States which have to look after the economic growth of their regions. There can be no comparison between a commercial undertaking and a State Government. The levy of a tax on railway freights stands on the same footing as a tax on railway fares.

(4) Taxes other than stamp duties on transactions in stock exchanges and futures markets.

(i) *Tax on transactions in stock exchanges.*—The Commission has referred to the view of some States favouring the levy, while some others felt that the yield from the tax would not be substantial or that such levy would not bring any advantage to them in the absence of stock exchanges or futures markets in their areas. The absence of stock exchanges or futures markets in certain areas cannot be urged as a ground at all for the non-levy of the tax. In any federal set up, States should have the freedom to tap the sources of revenue available to them which they consider more suitable and advantageous. There is no use trying to introduce rigid uniformity in this matter. The Commission has stated that the annual yield from this source would not be more than a crore of rupees. It has referred to the levy of stamp duties

by the State Governments in respect of transactions in stock exchanges and has concluded by saying that the rates of stamp duties could be increased. As we had occasion to point out in relation to succession duties, the fact that the State Government is entitled to levy stamp duties in respect of transactions in stock exchanges can be no ground for the Union refusing to exploit a potential source of revenue, the yield whereof goes in its entirety to the States. We, therefore, consider that at least as an experiment, the levy should be introduced.

(ii) *Tax on transactions in futures markets.*—The estimated yield according to the Commission from this item would be only Rs. 16 lakhs *per annum*. Sales tax when it was first introduced yielded only a very moderate amount. Futures markets are based more on speculation. This is a source of revenue, which deserves to be exploited.

(5) TAXES ON THE SALE OR PURCHASE OF NEWSPAPERS AND ON ADVERTISEMENTS PUBLISHED IN THEM.

After a comparison of the number of copies of daily newspapers circulated per thousand of population in this country with those in other countries, the Commission has concluded that since the tax on the sale of newspapers would be passed on to the readers, the tax would adversely affect newspaper readership. It has estimated the annual yield as Rs. 3½ crores. We would like to point out that a reasonable classification may be made in this matter. Readers of English dailies belong to a class of citizens which we consider can well afford to bear the burden likely to result from the imposition of the tax on the sale or purchase of such newspapers. The leading English dailies have a circulation extending to two or more States. Newspapers published in Indian languages may be excluded from the purview of the levy. We would accordingly suggest the levy of tax on newspapers on this basis.

The only item of tax specified in article 269, the levy whereof has been recommended by the Commission, is that on advertisements published in newspapers. The Commission has stated that it is a reasonable source from which additional revenues assignable to the States could conveniently be raised. It has left the question relating to its levy, rate structure, exemptions and other relevant matters to the Government of India for examination.

It will thus appear that the taxes mentioned in article 269 have not been exploited to any appreciable degree. This Committee is of the opinion that everyone of those taxes should be levied.* If the levy and collection of taxes by the Centre itself is considered inconvenient from the administrative point of view or inexpedient for any other reason, we would suggest that a general law may be enacted by Parliament providing for the levy and collection of the taxes specified in article 269 through the agency of the State on behalf of the Union. This is the position in the case of taxes on the sale of goods in the course of inter-State trade or commerce. There is no reason why a similar procedure should not be adopted in relation to the other items specified in article 269. If considered desirable, the general law suggested by us may provide that those taxes would be levied and collected by the Union in any State, only on a request from that State. Then, the choice will be with the State and the levy and collection of the tax will be at the instance of the State as an agent of the Centre.

Thiru Amal Ray in his article captioned *Federalism and Planning in India—Their mutual impact* already referred to, has stated that an effective means of augmenting the resources of the States is the optimum exploitation of revenue earning possibilities of article 269. Thiru G. S. Bhattacharyya, speaking at the Indian Parliamentary Association Symposium held in New Delhi on the 3rd May 1970, has referred to the general complaint of the States that the Centre is not very enthusiastic about the realisation of the taxes and duties under article 269, because the Centre does not derive any benefit from them. Almost all the answers received by us in response to our Questionnaire indicate unanimity of opinion that the taxes specified in article 269 should be transferred to the States. However, we do not agree with this view. Ever since the 1935 Act, taxes of this class have been in the Central field for the reasons already mentioned above. The new additions to this list are those specified in entries 90, 92 and 92-A. In view of their inter-State base, they may continue to be in the Union List. At the same time, we suggest exploitation to the fullest extent of those taxes in the manner suggested by us.

* *See* the article by Thiru Bhabatosh Datta captioned "Need for re examination of Centre-State financial relations" published in the Supplement to *Capital*, dated the 31st December 1970.

Surcharge on Income-tax.

30. Articles 271 and 274 may be said to supplement articles 269 and 270. Article 271 empowers Parliament to increase any of the duties or taxes referred to in article 269 (the whole of the proceeds of these taxes is assigned to the States) and article 270 (income-tax) by a surcharge for the purposes of the Union and the whole proceeds of any such surcharge form part of the Consolidated Fund of India. The States have been pressing for the inclusion of the surcharge levied under article 271 also in the divisible pool.

31. A suggestion was placed before the Third Finance Commission that the surcharge on income-tax levied under article 271, which had by then been in force for about 15 years, should be merged in the basic rates. It was stated that this would abate partly the impact of the loss sustained, as this would indirectly bring within the pool of distribution an excluded amount. The Third Commission, however, expressed its inability to deal with the point as it was contrary to the express provision of the Constitution and outside its terms of reference.

32. It was argued before the Fourth Commission that during normal times, there should be no surcharge exclusively for the Union and that if at all a surcharge was levied it should, as a matter of course, be made divisible being included in the basic rate after a period of three years. The Fourth Commission expressed its agreement in general with the view of the Third Commission on this point.

33. The Fifth Commission also considered the point. The States suggested that the net proceeds to be divided under the head "income-tax" should include a part or the whole of the proceeds of the surcharge at present levied on income-tax for Union purposes or alternatively that the Union surcharge should be merged with the basic rates of income-tax. In paragraph 3·21 at page 25 of the Report, the Fifth Commission has dealt with the States' complaint regarding surcharge on income-tax. It has taken rather a technical stand. Nobody denies the power of the Union to levy the surcharge under article 271. The Commission has left it to the Government of India to consider the grievance

of the States. The grievance of the States on this score has been voiced before all the Five Finance Commissions, but no remedy has been suggested by any of the Commissions, nor has the Government of India taken any steps in this regard.

34. Article 271 is similar to the proviso to section 137 and proviso (*b*) to section 138 (1) of the Government of India Act, 1935. Article 274 provides *inter alia* that no Bill or amendment which imposes any such surcharge as is mentioned in article 271 should be introduced or moved in either House of Parliament except on the recommendation of the President. According to clause (2) of article 274, the expression " tax or duty in which States are interested " means a tax or duty the whole or part of the net proceeds whereof are assigned to any State. Article 274 is based on section 141 of the 1935 Act. But there are two material differences between section 141 and article 274. One is that in according his previous sanction under section 141 to any Bill or amendment levying a surcharge, the Governor-General had to act in his discretion, which meant that he was not bound to consult the Central Cabinet, much less was he bound by the advice, if any, tendered by it. But under article 274, it is the Union Cabinet which ultimately decides the matter and even consultation with the States is not provided for. The second difference between section 141 and article 274 is that under sub-section (2) of that section, the Governor-General had, before according his sanction, to satisfy himself " that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account ". There is no similar provision in the article and the Union Cabinet is not subject to any restriction or condition in this regard. According to the Instrument of Instructions issued to the Governor-General, he had to ascertain the views of the Governments of the units, before according his sanction.

35. The Fourth Commission has gone into the need for consultation with the States before the President makes a recommendation to Parliament under article 274. While pointing out that although the procedural requirements of the article have all along been observed, it has stated that such observance may be capable of further improvement in such manner as would more fully carry

out the purpose of the article and would convey greater re-assurance to the States. With this end in view, the Commission has suggested holding of regular meetings at policy, as well as implementation, levels among representatives of the Union and the States. The Commission considers that the proceedings of such meetings would be helpful to the President. It will appear from the Reports of the successive Finance Commissions that the levy of the surcharge has been the subject matter of bitter complaint by the States.

36. Thiru A. K. Chanda has, in his article already mentioned above, stated that although the Central share of income-tax is being progressively reduced by the principles enunciated by the successive Finance Commissions, still the Centre's share along with the surcharge it levies, remains significant. Writing in 1965, he says: "It has however to be mentioned that there is some logic in the demand for merging the surcharge which has been levied for over 15 years on the basic rate. Earlier, the surcharge levied on income-tax for some years was merged in the basic rate after the second World War. This constituted a precedent for the demand". * Although technically speaking constitutional, the continued levy of the surcharge for such a long period does not seem justified especially when the States are excluded from participating in the yield of the surcharge. We recommend that the surcharge should be merged in the basic rate of income-tax so that it can be shared with the States. The Study Team appointed by the Administrative Reforms Commission has observed: ".....It will further have to be considered whether.... such of the surcharges as continue to be levied by the centre, for say, more than three years, should not be shared with the states..." In future, no surcharge should be levied except with the consent of at least a substantial majority of the States.

TAXES ON THE CONSUMPTION OR SALE OF ELECTRICITY.

37. This Committee is not called upon to deal with the entries in the State List relating to taxes. It has, however, to be stated that in respect of a few items, the power of taxation vested in the State is subject to restriction by the Union. One such item is entry 53 of the State List empowering the State to impose taxes

* Pages 243-244, *Federalism in India* by Asok Chanda (1965).

on the consumption or sale of electricity. This power is subject to the exemption specified in article 287. The tax cannot be imposed on the consumption or sale of electricity which is consumed by the Union or sold to it for its consumption or which is consumed in the construction, maintenance or operation of any railway. In the Government of India Act, 1935, as originally enacted, there was no provision corresponding to article 287. It was section 3 (3) of the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6 Ch. 5), which inserted section 154-A in the 1935 Act and article 287 is identical with that section. Accordingly, section 3 (1) and (4) of the Tamil Nadu Electricity Duty Act, 1989 (Tamil Nadu Act V of 1939), exempts sales of electricity to the Government of India for consumption by that Government or sales to that Government or a railway company operating any railway for consumption in the construction, operation, etc., of the railway from the imposition of the duty and it also provides that the price charged on such sales should be less by the amount of the duty than the price charged to other consumers of a substantial quantity of energy. Again, section 4 of the Tamil Nadu Electricity (Taxation on Consumption) Act, 1962 (Tamil Nadu Act 4 of 1962), prohibits the levy of electricity tax under that Act on the energy consumed by the Government of India or consumed in the construction, operation, etc., of any railway by that Government or a railway company operating that railway. The grievance of the States has been that the heads of taxation allotted to them have proved inadequate to meet their liabilities. This Committee itself has earlier in this Chapter suggested remedies to overcome the financial imbalance between the States and the Centre. The Committee, while discussing the distribution of legislative powers has, in relation to entry 32 of the Union List, recommended that the exemption of Union property from taxation by States contained in article 285 should be repealed. The exemption provided by article 287 stands on a similar footing and may also be repealed.

Concluding remarks on tax division.

38. The financial structure of India is heavily weighted in favour of the Centre, the three major and expanding sources of revenues, namely, customs, excise and income-tax being on the

Union List. Revenue resources allocated to the States are relatively unimportant and inelastic and hence the shortfall between the total expenditure of the States—Plan and non-Plan—and receipts from taxes and revenues available is great. As it is, the Indian Constitution ignores the sound principle that the financial resources allotted to a Government must, by and large, correspond with its executive responsibilities. With the advent of planning, the position has worsened as foreign aid and deficit financing, both are for the benefit of the Centre.*

GRANTS.

39. We have already dealt at some length with one source of financial assistance for the States to augment their revenues, namely, taxes and levies imposed by the Centre and collected either by the Centre or the States. According to the provisions of the Constitution as they stand now, the States are entitled to the net proceeds of certain taxes, though levied by the Centre. Certain other taxes are distributed between the Centre and the States. We have made our recommendations for widening the base of devolution *inter alia* by including corporation tax, wealth tax, excise duties, customs and export duties and surcharge on income-tax in the divisible pool.

40. Apart from this source, there is another way in which the resources of the States are augmented. This is by way of grants from the Centre. The only express provision authorising such grants is article 275. The material portion of the article runs thus :—

"Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States."

Under article 280 (3), one of the duties of the Finance Commission is to make recommendations to the President as to "the principles which should govern the grants-in-aid of the revenues

* Working paper No. III-E by Thiru Ajit Prasad Jain presented to the National Convention on Union-State Relations held in New Delhi in April 1970.

of the States out of the Consolidated Fund of India ". It may be noticed that there is no express reference to article 275, though obviously, the grants-in-aid referred to therein would cover the grants under article 275. Grants made under article 275 on the recommendations of the Finance Commission could be described as statutory. The recommendations of the Finance Commission are however not given the status of an award, binding on the Centre as well as the States. We have proposed that the recommendations of the Finance Commission should be binding on the Centre and the States.

41. Besides these statutory grants, i.e., grants provided by the Constitution and made in accordance with the recommendations of an independent body appointed under the provisions of the Constitution, there are other grants made by the Centre to the States. These are generally described as Plan grants—grants which will help the States concerned to carry out the schemes approved by the Planning Commission. Such grants are discretionary in nature and are being made on the recommendations of the Planning Commission.

42. There is nothing in the Constitution to prohibit the Finance Commission from making recommendations for Plan grants as well. The Chairman of the Fourth Finance Commission was of the view that constitutionally, the Finance Commission could recommend such grants. But actually, the reference to the Finance Commission has explicitly confined the duty of the Commission to make recommendations only as regards non-Plan grants.

43. The only article whose support is sought to enable the Centre to make Plan grants to the States is article 282. That is an enabling provision which empowers the Union and the States to make any grant for any public purpose, even if the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws. It is this article which has been utilised by the Centre for making conditional or unconditional grants to the States in connection with the Plans. This article is based on sub-section (2) of section 150 of the Government

of India Act, 1935. As already mentioned, the grants under article 275 are being distributed on the recommendation of the Finance Commission, whereas the grants under article 282 are being distributed on the recommendation of the Planning Commission. As pointed out by the Fifth Finance Commission, there is nothing in the language of article 275 to exclude from its purview grants for meeting revenue expenditure on Plan schemes, nor is there any explicit bar against grants for capital purposes. In the terms of reference of the First Finance Commission, there was no mention regarding Plan expenditure, and that Commission dealt with the revenue expenditure requirements of the States as a whole. The Second Finance Commission was asked to take into account the requirements of the Second Five Year Plan as well as the efforts made by the States to raise additional revenue from the sources available to them. The Third Commission had similar terms of reference and it recommended by a majority, grants under article 275 to the States so as to cover 75 per cent of the revenue portion of their Plan outlay. This recommendation was rejected by the Government of India. The Fourth Finance Commission was not specifically asked to take into consideration the requirements of the Fourth Plan. While it did not consider itself precluded from recommending Plan grants, it did not do so, because it considered it desirable that the Planning Commission should have unhampered authority in the matter. In the terms of reference issued to the Fifth Finance Commission, it was made clear that the Commission should confine itself to requirements "other than the requirements of the Five Year Plan". It was, however, argued before the Fifth Finance Commission that although the terms of reference precluded it from considering the requirements of Plan schemes, they did not prohibit the Commission from considering increased expenditure so as to improve the levels of specific social services outside the Plan. The Commission did not agree with this view and pointed out that this would blur the entire division of functions between the two Commissions.

44. The point is whether article 282 could be used for devolving non-statutory grants for Plan purposes to the States. Thiru K. Santhanam, who was the Chairman of the Second Finance Commission, while delivering a course of lectures on Union-State

Relations in March 1959 under the auspices of the Indian Institute of Public Administration, explained the scope of article 282 in the following words :—

"This was not intended to be one of the major provisions for making readjustments between the Union and the States. If that was the idea, then there was no purpose in evolving such a complicated set of relations of shares, assignments and grants. There is no purpose in having two Articles enabling the Centre to assist the States—one through the Finance Commission and the other by mere executive discretion. In the latter case, even Parliamentary legislation is not needed. Of course, it will have to be included in the Budget. But, beyond being an item in the Budget, no further sanction need be taken. Therefore, in my view, this Article was a residuary or reserve Article to enable the Union to deal with unforeseen contingencies. That was how this Article was used both by the British Government and, after transfer of power, before the first year of the First Five Year Plan. Under this Article, only some grow-more-food grants and some rehabilitation grants were given."*

45. This was specifically considered by the Chairman of the Fourth Finance Commission in a separate minute recorded by him. He has pointed out that article 282 contemplates a grant for a public purpose and has expressed his doubt whether grants under article 282 could be made without such grants being tied to a specific public purpose. In his opinion article 282 was never intended for the purpose for which it is now being used. He has referred to the marginal note to the article and has stated that the article was not intended to enable the Union to make a grant to a State as such. He has suggested that a specific constitutional provision may be made to enable the Union to make conditional grants to States for implementation of any project, whether falling within or without the Plan scheme on terms and conditions which would ensure a proper utilisation of the grants. According to him, article 282 could continue to be used for the purpose for which it was originally intended.

* Pages 40–41, *Union-State Relations in India* by K. Santhanam. This is also the view of Thiru Bhabatosh Datta expressed in his article captioned "Need for re-examination of Centre-State financial relations" published in the Supplement to *Capital*, dated the 31st December 1970.

16. The Study Team of the Administrative Reforms Commission appointed to go into Centre-State Relationships has dealt with the scope, historical background and the evolution of article 282. According to them, the logical inference is that article 282 was intended not to enable the Centre to make regular grants to a State but serve as a residuary provision enabling the Centre as well as the States to make grants for any "public" purpose. Referring to the argument that the purpose of article 282 is to validate expenditure incurred by the Union or the State on a subject not falling within its executive jurisdiction and that such expenditure should be direct and not necessarily limited to giving of grants, the Study Team has characterised it as an erroneous argument and stated that the article does not validate direct expenditure. In paragraph 4.7 at page 74, the Study Team has dealt with the views of the Chairman of the Fourth Finance Commission regarding article 282. The Study Team has concluded by saying that the legality of the present use of article 282 cannot be questioned. But it has suggested an amendment of the marginal note to the article. The Administrative Reforms Commission itself in its main Report has stated that when the Constitution was framed recourse to article 282 for the purpose of making grants for Five Year Plans could not have been contemplated.

17. Basu in his Commentary on the Constitution has also dealt with the scope of the article. According to him, the word "grants" in article 282 is not identical with the expression "grants-in-aid" in article 273 and article 275. But the word "grant" in article 282 means expenditure. He further states that in that article, the word has the same sense as in articles 113 (2), 203 (2), 204 (2), etc., and that if article 282 simply authorized the Union to make grants-in-aid in favour of States, there was no need for the article at all, since article 275 (1) already confers that power. According to him, article 282 authorizes the Union or a State to make direct expenditure on purposes which are not assigned to it by the federal distribution of powers, provided such purposes are public purposes.

18. This Committee is of the view that article 282 was not intended to "make grants" tied with conditions to States. It was intended to enable the Union and the States to incur expenditure for any public purpose, although such purpose may be outside the

legislative field of the spending Government. The issue may appear to be rather academic. What the Committee desires to stress is the point that the devolution of funds from the Centre to the States should not be at the absolute discretion of the Union.

49. Thiru Chanda takes a similar view : " Article 282 empowers the Union or a state to make a grant for any public purpose when it falls outside the area of their legislative authority. Though this article appears in the section dealing with ' Miscellaneous Financial Provisions ', it is being extensively used to regulate financial relations between the Union and the states. Though it was obviously intended to be no more than a permissive provision to meet a situation not otherwise provided, all capital grants to the states by the Union for implementing their respective shares of the Five Year Plans are now made under this Article as falling within the scope of ' public purposes '. The grants made under this Article are far larger than the total assistance afforded under other provisions governing the ' distribution of revenues between the Union and the states '. The technical point has been made to sustain this procedure that capital grant is not a distribution of revenues."*

Practically, all grants for Plan schemes are discretionary grants under article 282. These discretionary grants have outstripped those recommended by the Finance Commission and have placed the States in the position of supplicants for Central assistance. Moreover, the grants are conditional and circumscribe the freedom of the States in the matter of formulating plans according to individual needs.

† It is a disturbing trend to be taken note of that the non-statutory or discretionary grants have completely eclipsed the statutory grants. Discretionary grants constituted 71·3 per cent of the total grants paid by the Centre to the States in the Third Plan period. Discretionary grants and loans together constituted nearly 70 per cent of the total volume of resources transferred from the Centre to the States. The resources transferred through the medium of the Finance Commission aggregated to

* Pages 185-186, *Federalism in India* by Asok Chanda (1965).

† Working paper III-B by Thiru G. Ramachandran presented to the National Convention on Union-State Relations held in New Delhi in April 1970.

Rs. 1,488 crores within a total transfer of resources of Rs. 5,600 crores in the Third Plan period. The predominance of discretionary grants has given the Central Government a powerful leverage in influencing the policies and programmes of the State Governments even in spheres such as education, medical and public health which are constitutionally within the competence of the States. Among the various factors which have been a constant source of irritation between the Centre and the States in the realm of finance and planning, the preponderance of discretionary grants should be assigned an important place. These discretionary grants have been given under article 282 of the Constitution which occurring as it does under 'Miscellaneous Provisions' could not have been designed to be the principal support for State finances.

*It is clear that the scheme originally visualised in the Constitution for regulating the transfer of resources between the Centre and the States has proved inadequate. The fact that a significant part of the Central resources to States is canalised on the recommendations of the Planning Commission and that this transfer is discretionary, conditional and subject to fluctuations in the light of Centre's own financial position has further accentuated the sense of dependence of the States on the Centre.

50. The Committee is firmly of the view that grants by the Centre to the States should be made only on the recommendation of an independent and impartial body like the Finance Commission or similar statutory body.

THE FINANCE COMMISSION.

51. The important role that has been assigned by the Constitution to the Finance Commission as a body entrusted with the difficult and delicate task of determining the shares of the Union and the States in the taxes which have to be apportioned under both the mandatory and permissive provisions of the Constitution will be obvious from the preceding paragraphs of this Chapter. The Finance Commission is an authority without parallel in other federations. In the field of Centre-State relations, it occupies a unique position forming a vital link between the Federal Government and the regional Governments avoiding the stresses and strains which would otherwise have cropped up between them.

* Working paper No. III-B by Thiru G. Ramachandran.

Every Finance Commission has been flooded by the States with grievances of one sort or other. It must be said to the credit of the Commission that it has dealt with each one of those grievances objectively and has suggested remedies and offered solutions for the most intricate problems. The confidence that the States have reposed in it is due entirely to its independence and impartiality and its ability to hold the scales even as between competing claims. Hence, it is that this Committee has thought it fit to deal in this Report with the composition and functions of the Commission.

52. The Government of India Act, 1935, did not provide for the setting up of any Finance Commission or any other similar body. The idea appears to have been first mooted by West Bengal in its Memorandum to the Expert Committee on Financial Provisions. West Bengal emphasized the institution of a Finance Commission on the lines of the Commonwealth Grants Commission in Australia. One of the recommendations of the Expert Committee was that provision should be made in the Constitution for the appointment of a high level tribunal to be styled the Finance Commission. The Expert Committee stated that ordinarily there may not be enough work for the Commission to keep it busy continuously and that the members need not, therefore, devote their whole time to the work. According to the Committee, the President in his discretion should appoint the members and the reason given by the Committee was that the Commission would have frequent occasions to deal with points of conflict between the Centre and the units. The Chairman was to be a sitting or retired High Court Judge. Of the other four members, the Committee stated, two should be selected from a panel of nominees of unit Governments and two others from a panel of nominees of the Central Government.

53. In the Draft Constitution prepared by the Drafting Committee in February 1948, article 260 left it to Parliament to prescribe the qualifications necessary for the members of the Commission including the Chairman. The recommendation of the Expert Committee regarding representation of the units in the Finance Commission was not given effect to in the Draft Constitution. According to the Expert Committee, the Finance Commission should be a permanent body, the term of office of the members being limited to five years subject to renewal. The

Expert Committee also recommended that the Finance Commission should have the power to suggest variation in the heads of revenue assigned to the units, that is, the transfer of new heads or the withdrawal of existing heads, etc. It was further provided in the Report of the Expert Committee that the recommendations of the Finance Commission in so far as they do not involve any change in the Constitution would be accepted by the President and be given effect to by him by order, while recommendations involving a change in the Constitution if accepted by him would be dealt with like any other proposed amendment to the Constitution. The Draft Constitution did not embody these details in the article.

54. When the Draft Constitution was discussed in the Constituent Assembly early in November 1948, Thiru T. T. Krishnamachari expressed* the feeling that the Finance Commission should be enabled to go into the entire financial structure of the country and recommend changes even in regard to the heads of taxation enumerated in the Legislative Lists. He also stated that the recommendations of the Finance Commission should be made binding on the Union and the States. When the provisions of Part X of the Draft Constitution were discussed in the Assembly in August 1949, Thiru Krishnamachari, in the course of the discussion, stated that the Finance Commission was being set up with the limited object of assuring the States that they would have a fair deal and that the actual distribution should be done by the executive on the basis of the recommendations of the Finance Commission.†

55. In pursuance of clause (2) of article 280, Parliament has enacted the Finance Commission (Miscellaneous Provisions) Act, 1951 (Central Act XXXIII of 1951). The Act specifies the qualifications and disqualifications for membership of the Commission, term of office of the members, their conditions of service and the powers of the Commission. It may be noticed from article 280 and the Act of 1951 that no representation for the States has been provided for. It will be recalled that the Expert Committee on Financial Provisions expressly recommended that of the five members two should be selected from a panel of nominees of the

* Page 233, CAD VII.

† Page 326, CAD IX.

unit Governments. It will also be seen that according to the Expert Committee, the members of the Commission should be appointed by the President in his discretion. Under the Constitution and statutory provisions mentioned above, the appointment of the Chairman and the other members of the Commission is being made by the Union Cabinet. We have already indicated that the independence and the impartiality of the Commission have never been in question and we think that the present arrangement regarding the appointment of the Commission needs no change. Thiru K. Santhanam in his paper referred to earlier, has suggested that the personnel of the Commission should be settled after consulting the Inter-State Council. This suggestion is worthy of consideration.

56. The function of the Commission is specified in clause (3) of article 280. It is making recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them and the principles which should govern the grants-in-aid of the revenues of the States and any other matter referred to the Commission by the President in the interests of sound finance. The said clause (3) deals with what has been called " assured devolutions ". As pointed out by the Study Team of the Administrative Reforms Commission, the shares of the States in the divisible taxes and the amounts of grants-in-aid under article 275 " are determined on the basis of a semi-judicial adjudgment by the Finance Commission ".

Under the Constitution, the recommendations of the Commission are not binding. Sir B. N. Rau, Constitutional Adviser, was of the view that although as a matter of strict law, the President would be free to depart from them on the advice of the Cabinet, since the Commission was a quasi-arbitral body, whose function was to do justice as between the States and the Centre, no Ministry would advise the President to act otherwise than in accordance with the recommendations of the Commission. Again, Professor Alexandrowicz in his *Constitutional Developments in India* has stated that though the President should act only on the advice

of his Cabinet in case of conflict between such advice and the advice tendered by the Finance Commission, the Ministry could not ignore the recommendations of the Finance Commission in taking decisions. But under the Constitution as it stands nothing prevents the Union Cabinet from modifying the recommendations of the Commission or rejecting them *in toto*. The recommendation of the Third Commission by a majority that grants under article 275 should be of such amounts as would, together with surplus of tax devolutions, cover 75 per cent of the revenue portion of the Plan outlay of the States was not accepted by the Central Government. We have already pointed out that the Expert Committee on Financial Provisions set up by the President of the Constituent Assembly stated that the recommendations of the Finance Commission should be binding on the parties. A similar view was expressed by Thiru T. T. Krishnamachari also at one stage in the Constituent Assembly. Thiru K. Santhanam, in his paper mentioned above, has stated that the recommendations of the Finance Commission should be treated as an award so that there might be no opportunity for the Centre to discriminate among States on political considerations. The Finance Commissions have been functioning for a fairly long time and it is desirable to expressly provide in the Constitution that their recommendations would be binding on all the parties—Centre as well as the States. All the answers received by the Committee on this point support our suggestion.

57. The work relating to the assessment of the needs of the States with reference to their tax efforts, economy in expenditure and welfare activities calls for a continuous study of the problem. Any such study, if it is to be purposeful, should be undertaken by a Standing Commission of eminence assisted by a permanent secretariat. Data have to be collected from various sources and a thorough scrutiny will be of considerable help in allocating funds to the States. This Committee, therefore, recommends that the Finance Commission should be a permanent body with its own secretariat.*

* Thiru Bhabatosh Datta in his article captioned "Need for re-examination of Centre-State financial relations" published in the Supplement to *Capital*, dated the 31st December 1970, has expressed a similar view.

58. The stature and importance of the Finance Commission have been considerably affected by the so called Plan grants. "Economic and social planning" is a matter specified in entry 20 of the Concurrent List. There is no law relatable to this entry. Although the executive power of the Union is co-extensive with its legislative power, the power in relation to planning does not, in the absence of any express provision either in the Constitution or in any Act of Parliament, extend to the States—*See* the proviso to article 73 (1). With the establishment of the Planning Commission, the Central Government on the advice of the Planning Commission has assumed the responsibility for planning the States' development even in spheres which are exclusively in the State field. Transfer of funds from the Centre to the States for purposes of Planning has been effected in the form of discretionary grants and loans for implementation of the Five Year Plans. Notwithstanding the constitutional position referred to above, the Centre has assumed the role of an overall planner for the States.

59. As stated earlier, successive Finance Commissions have pointed out how the devolution of funds through the Planning Commission has curtailed the functioning of the Finance Commission. The Third Finance Commission suggested a solution. It set out two alternatives. One was to enlarge the functions of the Finance Commission to embrace the total financial assistance to the States whether by way of loans or devolution of revenues. This, the Third Commission stated, would be in harmony with the spirit of the express provisions of the Constitution. The second alternative suggested by the Commission was to transform the Planning Commission into the Finance Commission at the appropriate time.

60. The Study Team of the Administrative Reforms Commission which considered the Centre-State Relationships, has, after examining various alternatives to avoid conflict between the Finance Commission and the Planning Commission, recommended that the Planning Commission should be entrusted with the entire work of determining budgetary needs and that the Finance Commission should deal only with the sharing and distribution of Central taxes and the Planning Commission should

determine plan assistance as well as non-plan grants. The Administrative Reforms Commission has, however, recommended that the Finance Commission should be asked to make recommendations on the principles which should govern the distribution of Plan grants to States and that the appointment of the Finance Commission should be so timed that, when making its recommendations, it will have before it an outline of the Five Year Plan prepared by the Planning Commission. Thiru K. Santhanam is of the same opinion and has suggested that the Finance Commission should be asked to determine Plan grants also for each quinquennium—*See* his paper referred to earlier. Thiru N. A. Palkhivala expressed the same view before this Committee. In order to secure co-ordination between the Finance and Planning Commissions, the Administrative Reforms Commission has suggested the appointment of a member of the Planning Commission to the Finance Commission. The recommendation of the Administrative Reforms Commission seems to be the best solution and we commend it for acceptance. This means that when constituting the Finance Commission, one of its members will have to be selected from among the members of the Planning Commission. We would suggest that the member of the Planning Commission to be appointed to the Finance Commission should not be a member of the Central Government, nor in any way connected with the Central Government. He should be a person who would command the confidence of the States.

61. The Planning Commission is a body without any constitutional or statutory basis. It owes its existence to an executive order of the Union. Thiru Morarji Desai speaking at the Indian Parliamentary Association Symposium on Centre-States Relations held in New Delhi on the 3rd May 1970 has dealt with the question whether the devolution of plan resources also should be regulated by statute. In that context, he has stated that it is true that in the earlier years, there was not a regular system in this matter and that sometimes favouritism was shown to some people according as the predilections of people lay. If the devolution of grants under article 282 is channelled to the States through the Finance Commission as suggested by the Administrative Reforms Commission, there will be no room for the complaint of discrimination by the Centre.

It is absolutely necessary that the distribution of funds and making of grants must be entrusted to an impartial body like the Finance Commission or any other Commission consisting of non-party persons and the Union Government must accept its decision on such matters.

The Finance Commission should be entrusted with determining both Plan and non-Plan grants for each five-year period and the Central Government should treat its recommendations as an award so that there will be no opportunity for the Centre to discriminate among the States on political considerations.

Loans and Indebtedness of States.

62. While dealing with Finance, we cannot fail to take note of another connected topic, namely, that of the mounting indebtedness of the States. The assistance given to the States by the Centre in the form of loans is much greater than the assistance given by way of grants, that is, all grants whether made on the basis of the recommentations of the Finance Commission or otherwise. The bulk of the outstanding debt liabilities of the State Governments is now accounted for by loans from the Central Government. The Administrative Reforms Commission, in its Report on Centre-State Relationships, has dealt with this problem also. It has recommended that loans for Plan schemes should be given only when they are of a productive type, the question whether a scheme is productive or not being decided by the Planning Commission in consultation with the Finance and other Central Ministries concerned and that assistance for non-productive capital schemes should be in the form of capital grants.

It has suggested the reference to a committee of experts of the problem of dealing with outstanding Central loans to the States for Plan schemes and also the question of setting up a sinking fund for the amortisation of debts. The Fifth Finance Commission, which was requested to make recommendations as to the problem of unauthorized overdrafts of certain States with the Reserve Bank of India and the procedure to be observed for avoiding such overdrafts, has, in paragraph 43 at page 247 of the Report, suggested that the Central Government should consider the possibility of

suitably modifying the procedure for consolidation of loans to the States so that their repayment may be in instalments which correspond generally with release of Central funds to the States and the usual time of floatation of their market loans.

63. The Finance Minister of Tamil Nadu presenting the Budget for the year 1970–71 on the 26th February 1970 told the Legislative Assembly that the State has suggested that the period of repayment of loans taken by the State from the Centre should be readjusted to 20 to 25 years so as to be in alignment with the purposes for which they have been utilised. He has also reiterated that the time has come for the Central Government to appoint a Federal Debt Commission to look into the entire question with a view to rationalise the pattern of lendings and of repayments.

64. We may invite attention to the Australian Loan Council which first came into existence in pursuance of an Agreement between the Commonwealth of Australia and the States which constitute the Commonwealth. By section 105-A of the Constitution Act and by laws enacted by the Commonwealth and the States, this Agreement has been made binding on the Commonwealth and the States. The Council consists of the Prime Minister of the Commonwealth and Premiers of States or their deputies. Each State has one vote, whereas the Commonwealth has two votes and a casting vote. The loan programme of the Commonwealth and of each State is submitted to the Council in each year. If the Loan Council decides that the total amount of the programmes cannot be borrowed at reasonable rates and conditions, it fixes the amount of the loan programme. If the States and the Commonwealth do not by unanimous resolution agree on the portions of the amount to be allocated to each borrower, the amounts are to be allocated according to a formula set out in the Agreement and based on the borrowings of each State during the preceding five years.

65. The problem of indebtedness of the States has put a heavy strain on the relationship between the Centre and the States. We would urge that as recommended by the Administrative Reforms Commission, a committee of experts may be set up to consider the whole issue and we have no doubt that the committee will invite representations from the States and consider them in an objective

and impartial manner. The committee to be set up for this purpose may also consider the desirability of constituting a body on the lines of the Australian Loan Council or forming a development bank on the lines of the World Bank to deal with applications made to the Centre by the States for loans.

Relief Fund.

66. Whenever there is a convulsion of nature such as drought or floods, the present practice seems to be for individual States to apply to the Centre for succour. This practice has led to the criticism that the Centre is discriminating as between the States. In order to avoid this situation, this Committee considers that each State should constitute a fund earmarked for the relief of distress arising out of natural calamities. In this State, we have already a Famine Relief Fund whose establishment and maintenance are regulated by statute, namely, the Tamil Nadu Famine Relief Fund Act, 1936 (Tamil Nadu Act XVI of 1936). The Act specifically prohibits any expenditure from the Fund, except upon the relief of serious famine and the relief of distress caused by serious drought, flood or other natural calamities. But it permits the utilisation of any excess over 40 lakhs of rupees standing to the credit of the Fund to meet the expenditure on protective irrigation works and other works for the prevention of famine. Apparently, other States also have a fund similar to the Famine Relief Fund in this State. If there is no such fund in any State, this Committee recommends that steps must be taken to constitute one. The statutory provisions also may have to be amended to permit the utilisation of the Fund for ameliorative measures.

CHAPTER VI.

CENTRAL PLANNING AND PLANNING COMMISSION.

There was no legislative entry in the Government of India Act, 1935, relating to Planning. There is now an entry in the Concurrent List on economic and social planning. But up till now no law has been enacted by Parliament in exercise of the power conferred by this entry. The Planning Commission itself concerned with economic and social planning was not constituted by law. There is no provision in the Constitution for the establishment of a body like the Planning Commission, similar to article 280 which provides for the appointment of a Finance Commission. The following remarks of the Chairman of the Fourth Finance Commission in his Supplementary Note to the report emphasise the need for giving a statutory base to the Planning Commission :—

" There is no provision in the Constitution for a body like the Planning Commission. It was established by a resolution of the Government of India. Neither the strength of the Commission nor the qualification of its members was prescribed. The Government retained complete freedom to vary its strength at will and to appoint any one as a Member. There was no limit to the duration of the Commission. When it was constituted, possibly it was meant to be a temporary body and in a sense it continues to be so, though obviously it has come to stay. The composition of the Commission is unusual. It has, as its Chairman, the Prime Minister and among its Members, there are Cabinet Ministers. When compared to a statutory body like the Finance Commission, which is quite independent of the Government, the Planning Commission may be described as a quasi-political body. There has been from time to time variation in the strength of the Commission and in the appointment of its Members. Though its role is advisory, it has come to occupy a very significant and important place in the economic development of the country. *Vis-a-vis* the Government, it is not easy to describe its status in spite of its importance; it remains to this day a body without any constitutional or legislative sanction. As the entire plan, both as regards policy and programme, comes within the purview of the Planning Commission and as the assistance to be given by the Centre for plan projects either by way of grants

or loans is practically dependent on the recommendations of the Planning Commission, it is obvious that a body like the Finance Commission cannot operate in the same field. The main function of the Finance Commission now consists in determining the revenue gap of each State and providing for filling up the gap by a scheme of devolution, partly by a distribution of taxes and duties and partly by grants-in-aid. Personally, I have no comment to make on such a dichotomy of functions. But, I think that the relative scope and functions of the two Commissions should be clearly defined by amending the Constitution and the Planning Commission should be made a statutory body independent of the Government." (Pages 89—90).

Thiru K. Santhanam, in the course of his lectures delivered in March 1959, which we had occasion to refer to earlier on, has drawn attention to the basis on which the Planning Commission started working. According to him the basis was " that there would be practical uniformity of policy over the entire sphere of administration both in the Union and the States " and that " almost all the States were almost similar if not identical ". He also refers to the assumption " that the conditions in all the States were similar and similar programmes requiring same administrative action and similar methods of financing should be adopted in all the States ". In his view the Planning Commission has set up a sort of vertical federation, thus displacing a territorial or horizontal federation established by the Constituent Assembly. He is emphatically of the opinion that Planning has superseded the Federation and our country is functioning almost like a unitary system in many respects. Dictation from Central to State Ministries is inconsistent with the true spirit of State autonomy. The Constitution provides for a particularly strong paramount Centre with full power to control the States in all essential matters. This has been accentuated by Planning which has brought about an almost unitary State for purposes of economic development and financing. Political influences have also helped to emphasise this centralisation.

The Study Team appointed by the Administrative Reforms Commission has this to say about the consequence of Planning: " . . as a result of planning the three horizontal layers of administration represented by lists of central, concurrent and state subjects have been vertically partitioned into plan and non-plan sectors and . . . .

within the plan world, the compulsions and consequences of planning have tended to unite the three horizontal pieces into a single near-monolithic chunk controlled from the centre although operated in respect of concurrent and state subjects in the states" (Pages 95–96, Vol. I).

2. The absence of Constitutional and legal provisions relating to planning has tended to create in the States a sense of helplessness and complete dependence on the Centre's bounty. Consequently, the Centre has made serious inroads into the spheres exclusively assigned to the States. Dr. K. Subba Rao, in his Lal Bahadur Shastri Memorial Lectures delivered in March 1969, comments on the role of the Planning Commission thus :—

" . . . . the Planning Commission constituted in India functioned in violation of the provisions of the Constitution. That is possible because the same party was in power in the Centre and the States. It had grown in prestige by its intimate connection with important cabinet Ministers of the Centre and by its control of the nation's economy. Over the years it has developed into a super cabinet. . . The Centre through the Planning Commission controlled not only the State sector of the plan but also their implementation."*

Though the States prepare plans for their areas in the light of the particular targets suggested in the draft Plan prepared by the Planning Commission, the final shape of the plans is determined in the light of the discussions between the Planning Commission and the representatives of the States. The Centre is able to impose its will on the States in the formulation and execution of the Plans by virtue of the non-statutory grants under article 282, which are dependent on the absolute discretion of the Centre. It will thus be seen that the process of Planning and the activities of the Planning Commission have a very deleterious effect on the autonomy of the States particularly in spheres exclusively allotted to the States by the Constitution.

3. The Administrative Reforms Commission, in its Report on Machinery for Planning, has made some suggestions regarding the assistance to be given by the Centre to the States for purposes of

* Page 51, *The Indian Federation* by K. Subba Rao.

Planning. The recommendations have been set out in paragraph 4 at pages 10—11 of its Report on Centre-State Relationships. At the instance of the State Governments, the question of determining objective criteria for distribution of Central assistance to States for Plan schemes was placed before the Committee of Chief Ministers of the National Development Council early in 1969. The new principles of allocation settled by the National Development Council have been accepted by the Central Government and finances for schemes under the Five Year Plan are to be allotted on the following basis :—

(*a*) 60 per cent on the basis of population ; and

(*b*) 10 per cent each on the basis of—

(1) *per capita* income if below the national average ;

(2) tax efforts in relation to *per capita* income ;

(3) commitments in respect of major continuing irrigation and power projects ; and

(4) special problems (such as floods, chronically drought affected areas and tribal areas) of individual States.

Under the new Scheme which has become operative from 1969–70, Central Plan assistance to States as determined on the basis of the formula devised by the National Development Council will be given through block grants and loans and will not be tied to specific Schemes. However, Central approval will be required for major projects and for certain major sectors, like agriculture and education. In order that the States may have greater freedom in the drafting and implementation of their own Plans, the number of Centrally sponsored schemes has been greatly reduced. Detailed sectoral Planning and preparation and execution of individual schemes and programmes have been left to the State Governments.

4. As regards Centrally sponsored schemes, which are to be wholly financed by the Central Government, we may point out that the States are as much concerned with the so called Central schemes, as with the State schemes. Any scheme, under the Five Year Plan while benefiting the territory concerned, is ultimately intended to improve the economic lot of the nation as a whole,

This applies to Central schemes also. It is neither desirable nor expedient to exclude the States from participation in them. The schemes are situated within the State and as the scheme progresses in its implementation, the State has to take upon itself certain responsibilities such as acquisition of sites, measures regarding public health and more important than anything else, maintenance of law and order. We would, therefore, suggest that the States should be closely associated in the formulation and execution of even Centrally sponsored schemes and, if necessary, the States may be required to make such contribution as is within their financial capacity towards these Central schemes also. Where a Central scheme benefits a particular State or a region the general tax payer should not be asked to shoulder the burden resulting from the scheme. Some device should be formulated for the State or region concerned to take up the financing of the scheme either directly or by levy of betterment contribution.

5. We have, while dealing with the Finance Commission and the scope of article 282, dealt with the Planning Commission also. If our suggestion that the grants under article 282 should be routed through the Finance Commission is accepted, one of the major functions of the Planning Commission would have been taken away from it. The question then is what functions should be entrusted to the Planning Commission. As at present the Planning Commission will continue to deal with the formulation of Plans. We have referred to the legislative entry bearing on the subject in more than one place in the preceding paragraphs. This is an item in the Concurrent List. No law has been enacted under this entry. We consider that if the Planning Commission is to fulfil the objective with which it was originally set up, its composition and functions should be placed on an independent footing without being subject to control by the Union Executive or to political influences. This object could be achieved only by placing it on a statutory basis. A law may be made by Parliament providing for the establishment of a Planning Commission. It should consist of only experts in economic, scientific, technical and agricultural matters and specialists in other categories of national activity. No member of the Government should be on it. The law establishing it will have, of course, to deal with the

tenure, term of office and conditions of service of the members of the Planning Commission. It should have a secretariat of its own. It goes without saying that the Planning Commission as now constituted has to be abolished.

6. The function of the Planning Commission will be to advise on schemes formulated by the States. Each State may have a Planning Board on the same lines as the Planning Commission at the Centre. The Central authority will also have the additional responsibility of making recommendations for consideration by the Finance Commission regarding grant of foreign exchange to States for industrial undertakings started by or in the States.

PLANNING AND DEVELOPMENT.

7. Industrial development is one of the principal objects of Planning. Any activity relating to such development is now regulated in large measure by the Industries (Development and Regulation) Act, 1951. While dealing with entry 52 of the Union List in the Chapter relating to distribution of legislative powers, we had touched on the scope of this Act. We have there recommended that entry 52 should be recast so as to limit its operation to industries of national importance or of all-India character or to industries with a capital of more than one hundred crores of rupees. It follows from this recommendation that the Act of 1951 has to be repealed and replaced by an Act providing for the control by the Centre of only such industries as we have referred to above. The provisions relating to grant of licences should be completely omitted. The State should have the power to grant licences to start new industrial undertakings within the State either in the private sector or in the co-operative sector. The States should also have the power themselves to start and carry on industrial undertakings in the public sector (except in fields reserved for the Union) with or without foreign collaboration. If foreign exchange is required for any industrial undertaking licensed or started by a State, it should be provided by means of block grants to be allocated to each State. This allocation may be increased on the recommendation of the Finance Commission made in consultation with the Planning Commission.

CHAPTER VII.

THE JUDICIARY.

The Supreme Court.

According to the terms of reference to the Committee, the Committee has to suggest the measures necessary for securing, among other things, the utmost autonomy of the State in the judicial branch also including the High Court. The "judicial branch" has the Supreme Court at the apex. Until April 1937, the Government of India was essentially unitary in character and the question of a Supreme Court for India was not mooted. The High Courts in the three Presidency-towns, namely, Bombay, Calcutta and Madras, were the most important and appeals lay from them to the Judicial Committee of the Privy Council in England. The proposals of the British Government for Indian Constitutional Reform set out in the White Paper of December 1931 proposed the setting up of a Federal Court. The White Paper said "In a Constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executive on the one hand the Legislatures and Executives of the federal units on the other, a Federal Court has always been recognised as an essential element. Such a Court is, in particular, needed to interpret authoritatively the Federal Constitution itself." * The White Paper suggested the conferment of both original and appellate jurisdiction on the Federal Court. The original jurisdiction was to determine justiciable disputes between the Federation and any federal unit or between any two units involving a constitutional question. The appellate jurisdiction was to extend to the determination of appeals from any High Court or State Court involving constitutional questions.

2. The Joint Parliamentary Committee which considered these proposals agreed with the principle that there should be a Federal Court to act as "the interpreter and guardian of the Constitution and a tribunal for the determination of disputes

* Page 303, Volume I of the Report of the Joint Parliamentary Committee.

between the constituent units of the Federation". The Joint Parliamentary Committee endorsed the proposal that the Federal Court should have exclusive original jurisdiction in relation to disputes between the Federation and a unit or as between the units themselves. As regards the appellate jurisdiction of the Federal Court, the Committee recommended that it should extend to the determination of constitutional issues. It also recommended that appellate jurisdiction should take within its ambit interpretation of federal laws throughout the whole of the Federation. The Committee specifically considered the point whether there should be a separate Court of Criminal Appeal for the country. It came to the conclusion that a Court of Criminal Appeal was not required in this country in view of the various safeguards provided for in the Code of Criminal Procedure and the right of petitioning the Governor and the Governor-General.

3. Under the Constitution, the Supreme Court is vested with jurisdiction in several cases. The Supreme Court exercises original and exclusive jurisdiction to determine justiciable disputes between the Union and the States or between the States *inter se* (article 131). It is the final appellate tribunal of the country in all cases involving constitutional issues irrespective of the pecuniary interest involved and this jurisdiction extends to civil, criminal and all other cases (article 132). In civil matters, appeals lie to the Supreme Court subject to the conditions specified in article 133. Its appellate jurisdiction in criminal matters is regulated by article 134. The appellate jurisdiction of the Supreme Court in regard to criminal matters has been amplified by the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (Central Act 28 of 1970). Briefly stated, an appeal lies to the Supreme Court in all criminal cases where the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or to imprisonment for not less than ten years and where the High Court has withdrawn for trial before itself any case from any subordinate court and has in such trial convicted the accused person and sentenced him as aforesaid. Apart from articles 131 to 134, the Supreme Court has discretion to admit appeals by grant of special leave. Article 139 enables Parliament by law to confer on the Supreme Court the power to issue prerogative

writs for any purpose other than that of enforcing Fundamental Rights. Article 32 confers power on the Supreme Court to issue prerogative writs for the enforcement of Fundamental Rights.

4. The question is whether in a federal set up the Supreme Court should have the powers which it now possesses. As pointed out in the White Paper of 1931 and by the Joint Parliamentary Committee, a tribunal independent of both the Federal Government and the units is a necessity in any federal set up. This is the position in the U.S.A., Switzerland and Australia. In America, article III, section 2 (2), confers original jurisdiction on the Supreme Court in all cases affecting ambassadors and other public ministers and consuls and those in which a State shall be a party. In Switzerland, under article 110, the Federal Tribunal has to decide civil law disputes between the Confederation and the Cantons or as between any two Cantons. Section 75 of the Australian Constitution Act confers original jurisdiction on the High Court of Australia *inter alia* in matters between the States or between residents of different States or between a State and a resident of another State or in which the Commonwealth or a person suing or being sued on behalf of the Commonwealth is a party or in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.

5. The original jurisdiction of the Supreme Court conferred by article 131 has to continue. It is also necessary that the Supreme Court should continue to have the power to interpret the provisions of the Constitution. The question to be considered is whether it should have the power to interpret Acts passed by the various State Legislatures, unless it be that the case involves the interpretation of the Constitution in relation to the State Act. Again, should there be an omnibus provision conferring civil appellate jurisdiction on the Supreme Court even in cases where the value of the subject matter is twenty thousand rupees or more ? Further, the exercise of criminal appellate jurisdiction of the Supreme Court is also a point to be considered. In the U.S.A., the Supreme Court does not possess appellate jurisdiction in civil or criminal cases, that is, cases which do not involve constitutional issues. Neither the White Paper nor the Joint Parliamentary Committee, it will be seen, favoured the inclusion of an omnibus provision in the Constitution Act conferring appellate jurisdiction

on the Federal Court in ordinary civil cases. In our view the Constitution should not provide for conferment of appellate jurisdiction in civil cases, where it does not involve any constitutional issue. What applies to civil cases applies with greater force to criminal cases. In the U.S.A., the Supreme Court does not entertain ordinary criminal appeals. We are of the opinion that it is neither desirable nor expedient to increase the workload of the Supreme Court in relation to ordinary criminal appeals. In view of the safeguards provided by the Criminal Procedure Code, it seems superfluous to provide in the Constitution for criminal appeals to the Supreme Court, except in a case where it involves a constitutional issue.

6. We have, while dealing with article 262, stated that in relation to inter-State water disputes, the ultimate authority to enforce the awards of the Tribunal constituted under the Inter-State Water Disputes Act, 1956 (Central Act 33 of 1956), has necessarily to be the Supreme Court. We have suggested that the necessary provisions should be incorporated in the Central Act of 1956 for this purpose. Thus, it will be seen that the Supreme Court should continue to have the original jurisdiction conferred on it by article 131. Coming to the appellate jurisdiction, it seems that it will be more in consonance with the federal concept underlying our Constitution and in keeping with the autonomy of the States, if the appellate jurisdiction is confined to cases involving interpretation of the Constitution.

7. The enactments of the States are operative within the respective States. There is no question of a State Act having any extra territorial application. It seems hardly necessary to burden the Supreme Court with the task of interpreting State enactments. The ruling of the High Court should be final, unless it be that the interpretation of the Constitution is involved or it is contended that the State Act conflicts with some provision of the Constitution in which case a right of appeal may be provided for to the Supreme Court. Central Acts, however, are enforceable throughout the country. There are instances where different High Courts have given different rulings and the Supreme Court had to reconcile the conflict. The Income-tax Act is an example in point. Where the interpretation of a Central Act is involved, there should be a right of appeal to the Supreme Court from the decision of the High Court, whether or not the case involves a constitutional issue.

We recommend that the Supreme Court should continue to have original jurisdiction under article 131 and the jurisdiction conferred by article 32 and the power to hear appeals from the High Courts involving constitutional issues and the interpretation of Central Acts, but no appeal should lie to the Supreme Court in other civil or criminal matters.

8. Judges of the Supreme Court are now appointed in consultation with such Judges of the Supreme Court and of the High Courts as the President deems necessary. In ordinary judicial theory, the Supreme Court, like the High Courts, merely interprets a law. It says what the law means. But there is no denying the fact that the Supreme Court in another sense makes law. The controversy regarding the power of Parliament to amend the provisions of the Constitution relating to Fundamental Rights is an example. The law declared by the Supreme Court is valid throughout the country and all authorities are subject to its command. It is an all-India institution of the highest importance and may be said to occupy a position in the judicial branch of the administration similar to that assigned to Parliament in the legislative branch. In conformity with this, it is desirable that the Judges of the Supreme Court should be drawn as far as possible from the different parts of the country. In the U.S.A., the policy of giving broad representation to the nation's religious denominations has been an important factor in some cases. It is attributed in some measure to pressures from the minority denominations for representation. Again, in the U.S.A., Presidents generally try to maintain a geographical balance on the Court. In recent years, there has usually been one Catholic and one Jewish member in the Court. Of late, there has been considerable talk of appointing a Negro to the Court. In Switzerland, it must be ensured that the three official languages of the Confederation (German, French and Italian) are represented upon the Federal Tribunal (article 107). Regional considerations also influence the choice of the members of the Tribunal. This Committee recommends that in appointing Judges of the Supreme Court it is desirable to secure, as far as possible and without detriment to efficiency, representation for the High Courts and the Bar of the different parts of the country.

HIGH COURTS.

9. In other Federations, the highest court of the unit is under the control of the regional authority only. In the U.S.A., in a majority of States, the Judges are elected. In Australia, Judges in the States are appointed by the State authorities. Granville Austin in his book *The Indian Constitution—Cornerstone of a Nation* has stated* that in the Draft Constitution the Provincial Legislatures had much wider authority to legislate on High Courts than in the Constitution. The salaries and allowances of the Judges of the High Court are charged on the Consolidated Fund of the State. It is, therefore, but proper and expedient that the State Government should have an effective voice regarding the appointment, tenure of office and conditions of service of the High Court Judges. The High Court Judges hold office during good behaviour and no change is called for in this regard. Article 217, it will be noticed, refers to consultation with the Governor. The Governor, when consulted by the President under article 217 (1), has to act only with the aid and advice of his Council of Ministers. It follows that the present practice should continue and no further provision is necessary on this point.

10. Arising out of the suggestion relating to the appointment of High Court Judges is the point relating to their removal from office. According to article 218 read with article 124 (4) and (5), it is the President who has got the power of removal after an address by each House of Parliament is presented to him subject to the requisite majority. Parliament has prescribed the procedure for the investigation and proof of misbehaviour or incapacity of a Judge of a High Court and for the presentation of addresses by Parliament—*See* the Judges (Inquiry) Act, 1968 (Central Act 51 of 1968). A persual of the provisions of the articles and the Central Act would indicate that the State is completely shut out in the matter of removal—even consultation with the State is not mentioned anywhere. The State is as much interested in the independence, integrity and impartiality of the High Court as the Centre. It will be more consistent with the federal principle and in consonance with the autonomy of the State, if it is provided that the power of removal should be exercised on an address being

* Page 180.

presented by each House of the State Legislature supported by the requisite majority. It goes without saying that the procedure outlined by the Central Act should be followed with the modification that the powers and functions conferred on Parliament by the Central Act should be transferred to the State Legislature. Considering the fact that the salaries and allowances of the High Court Judges are charged on the Consolidated Fund of the State, the power to regulate the salaries and conditions of service of Judges of High Courts may be vested in the State Legislature. In the first Draft of the Constitution, the entire power regarding the salaries and allowances, leave and pensions of High Court Judges was in fact vested in the State Legislature subject to the proviso that the monthly salary of the Chief Justice should not be less than Rs. 4,000 and that of a puisne Judge Rs. 3,500. A similar provision may be inserted. If considered necessary, the minima may be raised.

11. Article 222 provides for the transfer of High Court Judges from one State to another. The consent of the Judge is not necessary. According to the memorandum of procedure drawn up by the Home Ministry, consultation with the Chief Ministers concerned is necessary before any such transfer is made. The provision does not seem to have been used on any large scale. This provision seems to be derogatory to the dignity and prestige of the office of Judge of a High Court. This Committee is strongly of the view that this article should be omitted.

12. Articles 223, 224 and 224-A may be considered together. They provide for the appointment of an acting Chief Justice, appointment of additional or acting Judges of High Courts and appointment of retired Judges at sittings of High Courts. None of these three articles refers to consultation with the Governor of the State concerned. As in the case of appointment of a permanent Judge of a High Court the appointments dealt with by articles 223, 224 and 224-A also should be made in consultation with the Governor who will act on the advice of his Ministry. In fact, according to the memorandum of procedure drawn up by the Home Ministry, in cases falling under these three articles, the Chief Minister is always closely associated in making these appointments. This Committee, while recommending that this informal procedure

may continue, is of the opinion that the three articles should be amended to provide that the President should act only in consultation with the Governor of the State concerned and as in the case of article 217 (1), the Governor will be guided by Ministerial advice.

13. At present, whenever the constitutional validity of any particular provision of a State Act is questioned, the High Court necessarily confines itself to that particular provision so challenged. The defect or lacuna, if any, that emerges as a result of the judgment is subsequently remedied. But sometime later another section or a particular provision of the same Act is again challenged and this process may be repeated any number of times in relation to particular provisions of the Act. This Committee is of the opinion that there should be some machinery whereby the constitutional validity of an Act could be finally decided upon once any particular provision of the Act is questioned. The Committee recommends that when any question regarding the constitutional validity of any particular provision of a State Act is raised, the State Government should be enabled to request the High Court to refer the question to a Full Bench of three or more Judges of whom one should be the Chief Justice. This Bench should go into each and every provision of the Act concerned and give its decision on the entire Act. Once this decision is rendered, the constitutional validity of any of the provisions of the Act should be beyond challenge.

14. The High Court does not possess powers similar to those conferred on the Supreme Court by clause (1) of article 143. It is the President who alone is empowered to obtain the opinion of the Supreme Court on any question of law or fact, if such question is of public importance. If the State Government considers it desirable or expedient to obtain the opinion of the highest court in the State on any legal or constitutional issue, for example, any Bill pending before the Legislature or to be introduced in the Legislature, there is no machinery to achieve the object. It is only after the Bill becomes law that the matter can be agitated in a court and that too at the instance of the individuals affected. This situation unnecessarily leads to litigation and several legislative measures could be saved from being invalidated, if only the State is empowered to obtain the opinion of the High Court well in advance of their

enactment. We, therefore, recommend that a provision on the lines of article 143 (1) may be made empowering the Governor to refer questions of law or fact of public importance to the High Court for its opinion. In a number of States of the American Union, it is constitutionally provided that upon request by the executive or Legislature, the Judges of the highest court of the State shall give their opinion as to the constitutionality of proposed measures or actions submitted to them. In other States, it is provided that the Judges themselves may suggest to the Legislature, measures for the improvement of law. A provision, as suggested above, will be most helpful and considerably reduce litigation.

CHAPTER VIII.

THE GOVERNOR.

Discussing the question whether the office of Governor need be retained, Thiru Asok Chanda, in an article contributed to the *Illustrated Weekly of India* (March 15, 1970) says,—

" When the Congress came to power at the Centre as also in all the States, the Chief Ministers were held to be the repository of real power and the Governors regarded merely as puppets to perform at their manipulation.

But with the Congress debacle and the growing instability in all the States, the situation has changed and the Governors have become functional. Circumstances have made it possible for them to take a hand even in ministry-making. And even those who disputed the discretionary powers of Governors are now reconciled to the view that they have a positive role to play in ensuring the stability and progress of their States. The need for the office also arises when the President takes over the administration of a State. In the new situation, the office of the Governor should not only be retained but his authority should be clearly spelt out. It is a hopeful sign that Governors are no longer inclined to consider themselves instruments of the Centre under compulsion to act on its direction or in its political interests."

The Governor is the head of the State. He is appointed by the President, that is to say, the Central Government and can be removed by them. The following points arise for consideration in relation to the office of Governor :—

(1) How far should the State Cabinet be associated in the matter of appointment of the Governor ?

(2) The relationship that should subsist between the Governor and the Central Government.

(3) The relationship that should subsist between the Governor and the State Cabinet.

(4) Whether the Constitution provides for the exercise of any power by the Governor in his discretion, that is, whether the Governor could exercise any of his functions without consulting the Ministry or contrary to the advice tendered by the Ministry.

2. *Point* (1) *above.*—The Constitution merely states that the Governor shall be appointed by, and hold office during the pleasure

of, the President. It does not provide for consultation with the State Government. But at the time of framing the Constitution, one of the members of the Drafting Committee (Sir Alladi Krishnaswamy Ayyar) expressed the hope that a convention would grow whereby the Government of India would consult the State Government in the selection of the Governor.* Although there is no express provision which requires such consultation, the present practice is to consult the Chief Minister before the selection of a Governor is finalised. The provision relating to the appointment of the Governor underwent several changes before it became part of the Constitution. †

The Study Team appointed by the Administrative Reforms Commission to consider the Centre-State Relationships has stated that the present practice of consulting the Chief Minister before the selection of a Governor is finalised should continue. It has, however, added that this should not dilute the primary responsibility of the Centre to appoint a competent and suitable person. It is difficult to understand the statement of the Study Team as to the dilution of the primary responsibility of the Centre in this regard. In the ordinary course of events and under normal conditions, the Governor has to function as a constitutional head which means that he has to abide by the advice tendered to him by the Cabinet. In the interest of securing harmonious relationship between the head of the State and the State Cabinet, it is but proper and desirable that the State Cabinet should always be consulted. In the alternative, it may be provided in the Constitution itself that he should be appointed by the President in consultation with a high power body composed of eminent jurists, lawyers and administrators. Sir B. N. Rau, Constitutional Adviser, in his Memorandum of May–June 1947, suggested the setting up of a somewhat similar body to advise the President "in such matters as the appointment of Judges". Thiru K. Santhanam‡ and Dr. K. Subba Rao § also have suggested that the Governor should be appointed by the President in consultation with some high power body.

* Page 431, CAD VIII.

† For a summary of these discussions, *see* Appendix V.

‡ *See* the working paper presented by him to the National Convention on Union–State Relations, held in New Delhi in April 1970.

§ Page 27, *The Indian Federation* by K Subba Rao.

3. *Point* (2) *above.*—By virtue of the powers of appointment and removal vested in the Central Government, it may be stated that the Governor is virtually a subordinate of the Central Government. This position of subordination and the possibility of the Central Government granting him extension of the term of office or some other suitable assignment, may be said to affect the individual judgment or discretion of the Governor in the discharge of his functions as the head of the State. Though the provisions of the Constitution to some extent appear to make him an agent of the Central Government, it is desirable to lay down guidelines as to the matters in respect of which he should consult the Central Government or in relation to which the Central Government could issue directions to him.

4. *Points* (3) *and* (4) *above.*—These two points are inter-related and may be considered together. The relationship between the Ministry and the Governor depends on the answer to the question whether under the Constitution, expressly or by necessary intendment, any discretion is vested in the Governor. The discretionary powers so called were introduced for the first time in the Government of India Act, 1935. Just prior to the inauguration of Provincial Autonomy on the 1st April 1937, the Governor acted with two different sets of Advisers, namely, (1) a popular Ministry to advise him in relation to what were then known as " transferred subjects" and (2) the Executive Council to advise him in relation to " reserved subjects". The 1935 Act demarcated the functions of the Governor into three different categories. They were (1) functions to be exercised by the Governor in his discretion, (2) those to be exercised in his individual judgment and (3) those to be exercised by him on the advice of his Cabinet. The Instrument of Instructions issued to the Governor made it clear that in relation to those functions which he had to exercise in his discretion, he need not be guided by the advice of the Ministry; in relation to functions to be exercised by him in his individual judgment, he had to consult the Ministry, but he could overrule the advice tendered to him. It was only in respect of the residuary matters that the Governor was obliged to act in accordance with the Ministerial advice. There were various provisions in the Draft

Constitution which expressly required the Governor to exercise his discretion in relation to the matters specified in them. The Special Committee which considered the Draft Constitution in April 1948 suggested that since the Governor was to be nominated by the President, all references to the exercise of functions by the Governor in his discretion should be omitted. During the consideration of the Draft Constitution as modified by the Special Committee, Dr. Ambedkar made it clear that the Governor would not exercise any functions in his discretion and that according to the proposed Constitution, he would be required to follow the advice of his Ministry in all matters.*

5. The Constitution does not provide for the issue of any instructions to the Governor; nor does it vest any discretionary powers in express terms in the Governor, except in relation to certain specified matters. The Study Team of the Administrative Reforms Commission has, however, come to the conclusion that the Governor can in his discretion withhold assent from Bills and that the functions endowed on the Governor by statute (e.g., Chancellor of a University) would fall within the area of discretion. Regarding the statement that the Governor could exercise his discretion in relation to withholding of assent to Bills passed by the State Legislature, it has to be pointed out that the proviso to article 175 of the Draft Constitution as it stood in February 1948 specifically required the Governor to exercise his discretion in relation to the return of Bills to the State Legislature. As already stated, the Special Committee decided to omit all references to the exercise of the functions by the Governor in his discretion. It is, therefore, difficult to understand as to how the Study Team has come to the conclusion that the Governor has discretion in the matter of returning Bills passed by the Legislature. The provision in the Draft Constitution conferring discretionary power in the matter of returning Bills was eventually omitted. In the matter of returning Bills to the Legislature, as in other matters the Governor is bound by the advice of his Cabinet. As regards statutory functions referred to by the Study Team such as Chancellor of University, this view seems to be based on the decision of the Allahabad High Court in *Joti Prasad* v. *Kalka Prasad*

* Page 467, CAD VIII.

(A.I.R. 1962 All. 128) where it was held that the Governor is identified with the State Government only when he exercises the executive power of the State and not when he exercises a statutory power. Commenting on the decision of the Allahabad High Court, Basu says :

" In the present context, however, we are not concerned with the question of the *status* of the person appointed by the Governor in exercise of his statutory powers, but the question as to the *nature of the statutory function* of the Governor, say, the function to appoint an officer of the University or some other statutory corporation with respect to which the Governor has been endowed with powers and functions. Are such functions to be exercised with ministerial advice under Art. 163 and can these be delegated to Ministers under Art. 166 (3)?

If it could be said that the Legislature has conferred those powers upon the Governor because of the confidence it has in his personal capacity, just as a settlor would have done when he appointed the Governor a trustee in his personal capacity, it could be safely predicated that such a statutory business is *not* a business of the 'Government of the State' within the meaning of Art. 166 (3).

But such a view, it is submitted, cannot be taken because the appointment of the Governor under a statute relating to a University or other statutory corporation is not made in his personal capacity but *ex officio* ; it continues only so long as he holds the office of Governor. It would follow, therefore, that the Governor is appointed to such statutory office by the Legislature only because he is the head of the State Government and only because such appointment cannot possibly be made in favour of the 'State Government', because the State Government cannot, in the nature of things, be appointed to hold an 'office'. If this be correct, the statutory functions of the Governor must be regarded as included within the 'business of the Government of the State' under Art. 166 (3) and within the meaning of 'functions' in Art. 163 (1)".*

Therefore, even in respect of statutory functions *ex officio*, the Governor has necessarily to act on the advice of the Cabinet.

* Page 280, Vol. 3, *Basu's Commentary on the Constitution of India.*

6. The question as to the discretionary functions of the Governor was considered by the Supreme Court in *Ram Jawaya* v. *State of Punjab* (A.I.R. 1955 S.C. 549 at page 556). The Supreme Court held that the Governors were constitutional heads of the executive and that real executive power was vested in the Council of Ministers. A similar view has been expressed by the Supreme Court in *T. M. Kanniyan* v. *I.T.O., Pondicherry* (A.I.R. 1968 S.C. 637). Again, Granville Austin in his book *The Indian Constitution—Cornerstone of a Nation* has categorically stated that the Governor occupies the same position as the English Monarch and that the Governor has to act in accordance with the advice of his Cabinet in all matters. To place the matter beyond doubt, article 163 (1) may be modified making it clear that the reference to discretion is only in relation to the matters in respect of which there are express provisions, e.g., Assam.

7. The Study Team of the Administrative Reforms Commission which considered the Centre-State Relationships has also referred to the discretion of the Governor being exercised in relation to three other matters, namely, (1) appointment of Chief Minister, (2) dismissal of Ministry and (3) dissolution of Legislature. The Study Team itself has indicated that the point is arguable. It must be mentioned here that in appointing the Chief Minister the discretion of the Governor is in large measure controlled by two provisions of the Constitution. One is the provision which states that the Council of Ministers is collectively responsible to the Assembly. This means that only a person, who has the confidence of the Legislature, can be a Minister. The other is that no person can be a Minister for more than six consecutive months without being a Member of the Legislature. Normally speaking, the Governor will have to call upon the leader of the majority party to form the Ministry. So also, in the case of dismissal of the Ministry, the Governor will have to find an alternative Ministry. As regards the dissolution of the Legislature, what Dr. Ambedkar stated in the Constituent Assembly in relation to the President will apply here. Dr. Ambedkar,* after referring to the practice in England, concluded by saying that the President will have to ascertain the feelings of the House and that it must be left to the President to

* Pages 106-107, CAD VIII.

arrive at a correct decision. The principles, which should be applied to the appointment of Chief Minister, dismissal of the Ministry and dissolution of the Legislature, cannot be different from those applicable to similar situations in England. The principles applicable to the situations mentioned above in England are well settled and they need not be re-stated here. What should be noted is that in discharging his functions, the Governor should be under no pressure from any external authority.

Thiru G. S. Pathak, Vice-President of India and Chairman of the Rajya Sabha, in his speech inaugurating the National Convention on Union-State Relations at New Delhi on the 3rd April 1970, explained the position regarding the discretionary powers of the Governor in the following words :—

"He is the constitutional head of the State to which he is appointed and in that capacity he is bound by the advice of the Council of Ministers of the State except in the sphere where he is required by the Constitution, expressly or impliedly, to exercise his discretion. In the sphere in which he is bound by the advice of the Council of Ministers, for obvious reasons, he must be independent of the Centre. There may be cases where the advice of the Centre may clash with the advice of the State Council of Ministers. In the sphere in which he is required by the Constitution to exercise his discretion, it is obvious again that it is *his* discretion and not that of any other authority and therefore his discretion cannot be controlled or interfered with by the Centre."

Foreign jurists have expressed similar views regarding the discretionary powers of the Governor. Prof. Alexandrowicz in his *Constitutional Developments in India* explains the position thus :

"The Governor (Rajpramukh) was clearly intended to be the nominal head of the State and this is his position in practice. Except in marginal cases his pleasure is accorded and withdrawn from the Ministry automatically and not as a matter of discretion." (Page 142)

* * * * *

"In the closed world of local politics he can hardly disregard the advice of his Ministry. As to the appointment of his Ministry, his action is determined by the policy of the majority party or of a viable coalition of parties in the Legislature." (Page 144)

Again, Granville Austin describes the position of the Governor as follows :—

"The discretionary and other special powers once allowed Governors were removed to bring their status into line with that of the President, many of these powers being transferred to the central government. For this reason it is safe to assume that the greater powers given Governors during the earlier stages of the framing process can in part be accounted for by the concept of looser federalism existing at that time, although this was never explicitly stated in the Assembly. A combination of a tighter federal structure and a belief in the desirability of uniform Executive procedures had worked to make the authority of the Governors and the President nearly identical." (Page 117)

8. So long as the Central Government has the power to appoint and remove Governors, the Governor cannot but look to the Central Government for guidance in the discharge of his duties. To cite one instance, the provision relating to the assumption by the Central Government of the Executive and Legislative functions of the State on the ground of the breakdown of the constitutional machinery in the State vests the entire power in the Union. So long as this provision stands, the Governor has necessarily to abide by the directives of the Central Government in its implementation. It is, therefore, necessary to indicate at least in broad outlines the principles which should guide the Governor in the exercise of the discretion, if any, vested in him. Leaders of public opinion have pleaded for the drawing up of written conventions or instructions, which should guide the Governor in the exercise of his discretionary functions.

The question whether instructions could be issued to the Governor has been the subject-matter of a lively discussion. The Vice-President of India inaugurating a symposium on the role and position of Governors and Centre-State Relations organised by the Indian Parliamentary Association, expressed himself against issuing any guidelines to Governors for their identical conduct in similar situations. The then Union Law Minister (late Thiru P. Govinda Menon), who initiated the discussion on the role and position of Governors, maintained that the

Governor had necessarily to exercise his discretion in relation to three matters, namely, appointment of Chief Minister, dismissal of the Ministry and reservation of Bills for the consideration of the President. The first two items have already been dealt with earlier in this Chapter. As in other matters, in reserving Bills for the President's consideration the Governor has to act on the advice of the Cabinet, because article 200 does not vest any discretion in the Governor. Thiru K. Hanumanthaiya, Chairman, Administrative Reforms Commission, disagreed with Thiru Pathak and stated that the President as the appointing authority could direct the Governor to follow the guidelines. Thiru K. Santhanam, in an article published in *The Hindu*, dated the 6th May 1970, has dealt with the problem in an exhaustive manner. According to him, guidelines could be laid down not only for the Governor but for the President as well. He has suggested the issue of a common set of guidelines for the President and the Governor relating to the appointment of the head of the Government (Prime Minister or Chief Minister), the right of the head of the Government to ask for dissolution of the Assembly and the return of Bills to the Legislature for re-consideration. He has also suggested the issue of special guidelines applicable to Governors only. Dr. K. Appadorai, writing in *The Mail*, dated the 20th July 1970, has made a similar suggestion regarding issue of instructions to Governor. It would thus appear that the general trend of thinking is that some broad rules should be evolved to guide the Governor in his actions both as an agent of the Central Government and as the constitutional head of the State Executive. According to the Administrative Reforms Commission, amendment of the Constitution is not necessary for issuing guidelines to the Governors.

Thiru Santhanam in his article mentioned above has disagreed with the view of the then Union Law Minister that the Governor has discretionary powers in relation to the appointment of Chief Minister, dismissal of the Ministry and reservation of Bills for the consideration of the President. Thiru Santhanam has stated that in those three matters it is not right to say that the Governor has discretionary power, as the Governor is expected to act in accordance with the British conventions of parliamentary democracy.

9. The position that emerges from the foregoing discussions is that the Governor has to function in a dual capacity (1) as an appointee of the Central Government and (2) as the constitutional head of the State. Dr. K. Subba Rao* has expressed the view that the Governor should not consider himself to be a mere agent of the Centre. This is the view expressed also by Thiru Pathak, Vice-President of India. We had earlier in this Chapter referred to his views on the matter. We are also of the same opinion. Dr. Subba Rao, has made some suggestions for insulating the Governor from the influence of the Union. One is the mode of appointment and we have already referred to it. His other suggestion is that the Governor should be rendered ineligible for a second term of office or any other office under Government and he should not be removed from office on any ground other than proved misbehaviour or incapacity after inquiry by the Supreme Court. We commend these suggestions for acceptance.

10. The next point that arises for consideration relates to the functions in respect of which the Governor has to exercise his discretion. We have stated earlier that the only areas in which the Governor can be said to possess any power of discretion are three in number, namely (1) appointment of Chief Minister, (2) dismissal of Ministry and (3) dissolution of the Legislature. We have already set out the practical limitations on the powers of the Governor even in these fields, but with the present fluid political situation in several States, the role of the Governor has assumed greater importance and the various political parties have been accusing the Governors of partisanship or subservience to the Centre. These criticisms may or may not be justified. But it should be ensured that the Governor is placed above party politics and that his actions are such that no suspicion of Central interference should arise. The absence of any guidelines or conventions with reference to which the Governor can exercise his discretionary powers makes his position difficult in moments of crisis. Conventions have to grow over a long period of time. We are extremely doubtful as to how far reliable conventions can be expected to be evolved. We have been working the Constitution for well over two decades and it does not appear that suitable conventions have

* Lal Bahadur Shastri Memorial Lectures delivered in March 1969—*See* page 27, *The Indian Federation* by K. Subba Rao.

been formulated so far. It may be too much to expect that such conventions will grow hereafter. To give one instance, a resolution adopted by the Emergent Conference of Presiding Officers of Legislative Bodies in April 1968 requested the Government of India, among other things, to take urgent and suitable steps to evolve conventions in regard to the powers of Governors to dismiss Ministries and in that context the Conference stated that the question whether a Chief Minister has lost the confidence of the Assembly should at all times be decided in the Assembly. In the light of the recent happenings in some States, can it be said that this recommendation has been adhered to ? We are of the opinion that suitable guidelines should be issued to the Governors in writing. The constitutional validity of the issue of instructions to the Governors has been doubted. While the Study Team has recommended the issue of instructions and has added that no amendment of the Constitution is necessary, doubts have been raised on this point by others. Thiru K. Santhanam shares the view of the Administrative Reforms Commission. This Committee considers that if Instruments of Instructions are to be issued to Governors, it should be given a Constitutional footing if only to avoid legal conundrums being raised at some future date. The Government of India Act, 1935, provided for the issue of such Instruments not only to the Governor but to the Governor-General also. Under that Act, the Instruments of Instructions had to be laid in draft before the British Parliament and approved by it. It was only after such approval that the Instruments had to be issued. Our Constitution in the initial stages contained a provision for the issue of similar Instruments to Governors. Subsequently, this provision was omitted from the Constitution. We recommend that a specific provision should be inserted in the Constitution enabling the President to issue Instruments of Instructions to the Governors laying down guidelines or principles with reference to which the Governor should act including the occasions for the exercise of discretionary powers.

11. As repeatedly pointed out by us in this Chapter, the area of discretion of the Governor is rather limited. The Constitution makes the Council of Ministers responsible to the Legislative Assembly. This necessarily implies that if at any time the question

arises as to whether the Ministry enjoys the confidence of the House or not, the only forum which could decide the issue is the Assembly and not any other authority. Recent events have raised several controversies and accusations have been made against the Central Government of interference with this power vested in the State Assembly. This Committee is not concerned with this aspect of the matter. The Committee is drawing attention to this fact in order to indicate that the guidelines to be incorporated in the Instruments of Instructions should make it clear that consistent with the Constitutional provision bearing on this point, it is the Assembly and the Assembly alone which should decide the issue of confidence in the Ministry. With this object in view, we recommend that the Instruments of Instructions to be issued to Governors may specify in detail the manner in which the Ministry should be formed. It may be provided as follows :—

(*a*) The Governor should appoint as Chief Minister the leader of the party commanding an absolute majority in the Legislative Assembly.

(*b*) Where the Governor is not satisfied that any one party has an absolute majority in the Assembly, he should of his own motion summon the Assembly for electing a person to be the Chief Minister and the person so elected should be appointed by the Governor as the Chief Minister.

(*c*) The advice of the Chief Minister to the Governor to dismiss any Minister should be accepted by the Governor.

(*d*) Where it appears to the Governor at any time that the Chief Minister has lost the confidence of the majority of the Members of the Assembly, the Governor should immediately and of his own motion summon the Assembly and direct the Chief Minister to secure a vote of confidence in the House.

(*e*) If the Chief Minister fails to seek the vote of confidence or having sought it fails to get the necessary vote, the Governor should dismiss the Chief Minister and the Council of Ministers headed by him.*

* A somewhat similar suggestion has been made by Dr. K. Subba Rao—*See* pages 27–28, *The Indian Federation* by K. Subba Rao.

If the Constitution is to be amended providing for the issue of instructions to the Governors on the lines indicated above, the resultant position will be that the well accepted constitutional principle inherent in all parliamentary democracies that the Ministry holds office so long only as it enjoys the confidence of the Legislature would be incorporated in a constitutional instrument. It follows that in that contingency, the question of Ministers holding office during the pleasure of the Governor would not arise. The Committee accordingly recommends that the provision in the Constitution that the Ministers hold office during the pleasure of the Governor should be omitted. It goes without saying that except as provided in the Instrument of Instructions, the Governor will have no power to dismiss the Chief Minister.

CHAPTER IX.

EMERGENCY PROVISIONS.

Three types of emergency are contemplated by the Constitution and are dealt with in Part XVIII. They are: (1) emergency confined to a single State, that is, failure of the constitutional machinery in a State; (2) emergency on a national scale, that is, arising out of war, external aggression or internal disturbance; and (3) special emergency involving a threat to the financial stability or credit of India or any part thereof.

(1) EMERGENCY CONFINED TO A SINGLE STATE.

2. We may first deal with the emergency arising out of failure of the constitutional machinery in a State. Articles 356 and 357 relate to this topic.

From a perusal of the proceedings of the Constituent Assembly,* it will be observed that articles 356 and 357 were adopted in the face of opposition by several leading members of the Constituent Assembly. There is no provision similar to these two articles in any other Federal Constitution. This is a provision inherited from the 1935 Act. The condition precedent for the operation of article 356 is the satisfaction—be it noted subjective—of the President, that is the Union Ministry, that " a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution " " on receipt of a report from the Governor....or otherwise ". The Constitution does not define as to what constitutes a situation of the type just now mentioned. No clear rules or conditions have been laid down to decide what constitutes failure of a State's machinery.

3. An interesting article has been contributed by Thiru Shiv Raj Nakade on article 356 and how it has been used so far.† From the manner in which the article has so far been used, the writer has deduced the following three general features :—

(1) The Central Government which had a Congress majority at the Centre as well as in most of the States acted in accordance with political expediency in imposing President's rule.

---

* For a summary of these discussions, *See* Section A of Appendix VI.

† *Vide* pages 78-123, Vol. III, No. 4, October—December 1969 issue of the *Journal of Constitutional and Parliamentary Studies.*

(2) It exercised extraordinary powers in keeping State administration under its direct control in the absence of an alternative Ministry in the State.

(3) On a good number of occasions, the Central Government had given the impression that article 356 was used to restore democracy in States.

The author has dealt with each one of the occasions on which the article was put into operation beginning with East Punjab, which was the first State to come under President's rule in June 1951. In all, he has given 19 instances where the article was put into operation in different States. We may here point out that he has also referred to instances relating to the Union territories of Goa, Manipur and Pondicherry, but article 356 does not apply to Union territories. It deals only with States. The provision applicable to Union territories is section 51 of the Government of Union Territories Act, 1963 (Central Act 20 of 1963), which deals with a situation in the government of Union territories similar to that contemplated by article 356 in relation to States.

4. According to the author of the article, the provision was used in East Punjab in 1951 as "a device to end party rivalry and maladministration of the State". The Central Government's action in bringing PEPSU under President's rule in 1953 may, according to the author, "appear to be a partisan" action "to serve party interests". Dealing with President's rule in Orissa in 1961, he says that it has become a general practice of the Congress Party that whenever they were sure to capture power in the mid-term elections, they managed to impose President's rule and favoured the dissolution of the State Legislature. Dealing with another instance, he has recorded it as his opinion that the ruling party's interests were served in not allowing formation of a non-Congress Government and that, therefore, the people rightly felt that within the democratic set up they were punished for not electing members of any political party with a clear majority.

It is not for the Committee to discuss and consider the question whether the Central Government was justified on those occasions in assuming powers of the government of the State under article 356.

The Committee is referring to the instances only to show that the power is capable of being used to deprive the States of their autonomy.

5. The author has suggested four remedies to cure the defects inherent in article 356. They are: (1) an amendment of the Constitution laying down conditions under which the power could be exercised, (2) making the power justiciable by the Supreme Court or in the alternative casting an obligation on the President to obtain the advisory opinion of the Supreme Court before bringing a State under his direct control, (3) making the office of the Governor elective and (4) constitution of an advisory body consisting of High Court and Supreme Court Judges and taking its opinion. The opinion of the advisory body should be placed before Parliament when it is in session and before the Parliamentary Board constituted for the purpose, when Parliament is not in session. The President will act only with the approval of Parliament or of the Board.

Thiru K. Santhanam in his article entitled *Propriety of Mid-Term Dissolutions* and published in *The Hindu*, dated the 2nd July 1970, has, while commenting on the scope of article 356, this to say:—

"The imposition of Presidential Rule whenever a Ministry is defeated and no alternative Ministry can be found is one of the most unsatisfactory aspects of the Indian Constitution. Ordinarily, when a Ministry is defeated and an alternative Ministry cannot be found, the proper course should be immediate dissolution and re-election so that people of the State will have a chance to decide for themselves. It is only where law and order cannot be maintained and the legislature cannot function in peace that Presidential Rule can be really justified. In the discussions in the Constituent Assembly on Article 356, it was emphasised by many speakers that except in cases of civil disorder, Presidential Rule should not be imposed without first a dissolution and general elections".

6. Basu in his Commentary on article 356 has stated that as to the circumstances when the power under article 356 may be exercised, no precise definition is possible, for the simple reason

that the question is non-justiciable. According to him, the entire decision is left to the Governor and the Union Executive and there is no sanction prescribed against any possible abuse of this power. He envisages only two contingencies as justifying the promulgation of a Proclamation under the article. They are (1) a political breakdown, that is, when a Ministry has resigned and an alternative Ministry could not be formed without a fresh general election in the State or where the party commanding a majority refuses to form a Ministry and a coalition able to command a majority in the Legislature cannot be formed and (2) that the very words " in which the government of the State cannot be carried on in accordance with the provisions of this Constitution" indicate that the article is not intended to supersede the other provisions of the Constitution relating to States, example, the provisions of articles 163 and 164 and that accordingly it would not be proper to unseat a Ministry so long as it commands a majority in the State Legislature. He is of the opinion that it is difficult to justify the proposition that although a Ministry commands a majority in the State Legislature, it may be dismissed on the ground that it has lost the support of the majority of the people at large, because according to him there is no provision in the Constitution requiring that the Ministry must in addition to the support it has in the Legislature command the confidence of the people outside the Legislature.

7. It is an admitted fact that there have been complaints that article 356 has been used for a purpose which was not in the minds of the framers of the Constitution. The position of the Governors has been rendered more difficult by the use of the article. Accusations have been levelled that the Governor was merely acting as an agent of the Central Cabinet whenever article 356 was invoked. The latest case which has subjected the Governor to strenuous criticism is that of Uttar Pradesh. President's Rule was promulgated in that State and a few days immediately thereafter, the Proclamation was revoked and a popular Ministry assumed office. Article 356 is an unusual provision not found in other federations and the Union after all is one of the parties to the federal compact and the vesting of such unguided discretion in the Union is bound to work to the detriment of the States. It is a political party or a combination of political parties which runs the Government whether it is at the Centre or in a State. As pointed out

by Prof. N. G. Ranga in his speech at the Indian Parliamentary Association Symposium held in New Delhi on the 3rd May 1970, there must be some safeguard against the Centre's misuse of power. In the course of his speech, he said that while the States go wrong, it is possible for the Centre also to behave in a very unreasonable manner. We may refer here to the following comments of Thiru Asok Chanda on these articles in his *Federalism in India* :—

"These are extraordinary provisions absent in all other Constitutions.....The invasion of the legislative and executive jurisdiction of the states is also repugnant to the very concept of its federal Constitution. Though imbibing the principles of democratic Constitutions, the Indian Constitution is not altogether free from authoritarian trends which it inherited in accepting the basis of the 1935 Act." (Page 67)

"The provisions for the supersession of state government and its legislature and the suspension of the Constitution in the state are not only unusual but extraordinary, not present in any other Constitution.

• • • • •

The Article has been invoked for this reason more than once and in more than one state.....Its provisions may also be invoked as mentioned earlier if a state fails to carry out central directions on matters specified. In the event of gross mis-government in a state also, there is no constitutional bar to central intervention. The use of the word 'otherwise' makes this intervention possible even without formal report from the Governor.

• • • • •

The Constitution does not provide for the suspension of the constitutional machinery of the Union but only of the states and that also by the issue of a proclamation by the President. The decision on the supersession of a state government has thus to be taken at the instance of the Union executive. Secondly, the powers come to be vested not in the Governor, but in the President though he may use the Governor as his agent for such purposes as he specifies. The Constitution thus gives the Union executive in the first instance and Parliament later the right to bring a state completely under central administration. Though there has been no abuse of this power so far, there is nothing to prevent an abuse

in future. Furthermore, it is the Union which determines whether there has been any lapse on the part of a state in carrying out central directions or whether there has been a breakdown of the constitutional machinery in a state. No legal remedy has been provided to the state to contest the validity or justification of supersession." (Pages 100—101)

Again, Dr. K. Subba Rao, in his Lal Bahadur Shastri Memorial Lectures, delivered in March 1969, has this to say regarding articles 356 and 357 :—

"This provision is intended to preserve and protect democracy, but is capable of great abuse. Since the present Constitution of India came into operation there had been many occasions when this power was invoked ; 1951 in Punjab, 1952 in Pepsu, 1954 in Andhra, 1960 in Kerala, 1961 in Orissa and 1967 in Rajasthan and Hariyana, 1968 in West Bengal, Punjab and Bihar.

There was a strong public criticism that in most of the said cases it was not possible to say that the State could not be carried on in accordance with the provisions of the Constitution within the meaning of Article 356 thereof.

* * * * *

..these proclamations and the criticisms bring out the inherent conflict between the Centre and the States which unless reasonably solved will put the said relationship in peril. The solution for this conflict lies in the true interpretation of article 356 of the Constitution and on the building up of healthy conventions.

* * * * *

Unless the party that happens to be in power in the Centre develops conventions to shed its party affiliations in the matter of its relations with the States, the federal Government cannot effectively function in our country."*

8. Articles 356 and 357 may, therefore, be entirely repealed. The only other alternative is to provide safeguards to secure the interests of the States against the arbitrary and unilateral action of a party commanding overwhelming majority which happens to be in power at the Centre. But as pointed out by Thiru K. Santhanam †

* Pages 22, 23 and 50, *The Indian Federation* by K. Subba Rao.

† *The Hindu*, dated the 2nd July 1970.

and Pandit Kunzru * the only contingency in which President's rule may justifiably be imposed is the complete breakdown of law and order when the State Government is unable or unwilling to maintain the safety and security of the people and property. In the interests of stability and for assuring the States that they will be free to function without fear of article 356, it seems desirable to incorporate the necessary provision in the Constitution itself.

9. It will be observed that the Union Executive could invoke article 356 even without a report from the Governor, " the man on the spot ". Thus, President's Rule could be promulgated on the basis of extraneous sources. In fact, Thiru H. V. Kamath protested† in the Constituent Assembly against the use of the words " or otherwise " occurring in the article. Professor Shibban Lal Saksena‡ supported Thiru Kamath. The latter stated that the word " otherwise " is mischievous and diabolical. In dealing with the appointment and functions of the Governor and his relations with the State Cabinet, we have emphasized the fact that the Governor should not deem himself to be a mere agent of the Centre and that the emphasis should be on his role as the constitutional head of the State. We have also suggested issue of Instruments of Instructions to the Governors regarding the exercise of their functions including the exercise of discretion. We have also recommended that the tenure of office of a Ministry in any State should not be dependent on the pleasure of the Governor and that the Ministry should continue to function and perform its allotted duties so long as it is able to command a majority in the Legislative Assembly. Consistent with these recommendations, this Committee is of the view that the President should not have the power to bring under the control of the Union the administrative and legislative machinery of a State except on receipt of a report from the Governor. The Governor is the highest dignitary in the State appointed by the Union. It is difficult to envisage a situation where the President can come to any decision under article 356 regarding the feasibility or otherwise of the government in a State being carried on in accordance with the Constitution except with reference to a report

* Page 156, CAD IX.

† Pages 140-141, CAD IX.

‡ Page 143, CAD IX.

from the Governor. We accordingly recommend that if article 356 is to be retained, the words " or otherwise " occurring in clause (1) of the article may be omitted.

10. It follows from the above recommendation that the Governor, before recommending President's Rule, should explore all possible avenues open to him to secure a Ministry which would command the confidence of the Legislature. It is only as a last resort that the Governor should normally send a report under that article. The only other contingency which would justify the imposition of President's Rule is the one we have already mentioned above, namely, the complete breakdown of law and order in the State. The only forum which could decide the question whether a Ministry could continue in office is the Legislative Assembly. Even if the Governor is personally of the view that the situation warrants the promulgation of President's Rule on any particular occasion, we would suggest that the President should, before actually issuing the Proclamation, afford a reasonable opportunity to the State Legislative Assembly for expressing its views on the report of the Governor. The immediate result of the imposition of President's Rule in a State is the virtual dismissal of the Ministry, but the more important aspect to be considered is that the State Legislative Assembly may either be dissolved forthwith or be kept in suspended animation. In either case, the Assembly is rendered ineffective and cannot function. Hence, it is that we suggest that on the analogy of principles of natural justice, the party likely to be affected by the imposition of President's Rule, namely, the State Legislative Assembly should be given an opportunity to consider the issue and give its opinion before that august body is immobilised. We, therefore, recommend the addition of a proviso to clause (1) of article 356 requiring the President, before issuing the Proclamation, to refer the report of the Governor to the Legislative Assembly for expressing its views thereon within such period as may be specified in the reference.

11. The imposition of President's Rule is dependent on the subjective satisfaction of the Central Cabinet and any reason may be good enough for the purpose. The Constitution itself specifies one such ground in article 365. The phraseology employed in that article is identical with that of article 356. Both the articles use

the words " a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution ". Article 365 operates " Where any State has failed to comply with, or to give effect to, any directions given " by the Union and it automatically attracts article 356. Who is to decide whether or not a State has complied with or given effect to those directions? It is again the Union Cabinet and here too it is arguable whether the issue can be agitated in a court of law.

12. In the Chapter relating to administrative relations, we have touched upon the scope of article 365. We had also drawn attention to the opposition in the Constituent Assembly to the enactment of this article. We have pointed out that it was fiercely attacked by several leading members of the Assembly. Among them was Pandit Kunzru. They were dismayed at the drastic power of the article. It was characterised by some as a reproduction of the hated section 93 of the 1935 Constitution " in all its nakedness and horror ".* Another point which has to be repeated here is that this provision was introduced in the Assembly just 11 days before the Constitution was finally adopted by the Assembly. We have already indicated that it is this provision, which renders most obnoxious the other provisions of the Constitution authorizing the Union to issue directions to the States. This provision has no precedent in any other Federal Constitution. We have also indicated in the Chapter on administrative relations that any contravention of, or failure to implement, a direction issued by the Union to the State should, under no circumstances, be made a ground for the imposition of President's Rule. It follows that article 365 has to be repealed.

(2) National Emergency

13. On the issue of a Proclamation by the President that a grave emergency exists whereby the security of India or of any part thereof is threatened, whether by war or external aggression or internal disturbance, the allocation of both executive and legislative functions between the Union and the States as well as the division of financial resources between the two layers of Government

* Pages 510, 512, 515–516, 518–519, CAD XI.

become modified to such an extent that the Constitution almost gets itself converted into a unitary type.*

14. Article 352 is modelled on section 102 of the 1935 Act. But there are two differences between the two provisions. One is, section 102 of the 1935 Act referred to the threat to the whole country, whereas article 352 refers also to the threat to any part of the country. Another difference is that the section referred only to war or internal disturbance, but the article refers to external aggression also. We are drawing attention to these differences not with a view to suggesting any modification to article 352. We are only trying to say that article 352 is much wider in scope than its counterpart in the 1935 Act. In so far as the States are concerned, the consequences of the issue of a Proclamation of Emergency under article 352 are threefold, executive, legislative and financial. On the legislative plane, once a Proclamation of Emergency is issued, Parliament is clothed with the power to make laws for any State even with respect to any of the matters enumerated in the State List [article 250 (1)]. Again, Parliament is enabled by article 353 (*b*) to make laws conferring powers and imposing duties upon authorities and officers of the Central Government although such powers and duties may relate to a matter within the competence of the State. Coming to the executive side, the executive power of the Union extends to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised [article 353 (*a*)]. This will be in addition to the power conferred on the Centre by articles 256 and 257. The directions under article 353 (*a*) may relate to a matter included in the State List. Those directions could be enforced by the Centre by invoking article 365 read with article 356. As regards the allocation of revenues between the Centre and the units, the Union, that is, the Cabinet at the Centre, is invested with absolute powers to modify the entire scheme of division of financial resources as between the Union and the States during a period of Emergency. The detailed scheme of distribution of revenues between the two layers of Government embodied in articles 268 to 279 can, if the Union Cabinet so chooses, be set at naught under the pretext of National Emergency.

* For a summary of the discussions in the Constituent Assembly relating to this article and other connected articles, *see* Section B of Appendix VI.

Dr. K. Subba Rao, in his Lectures mentioned earlier, says :—

"Under Article 352 of the Constitution if the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory is threatened whether by war or external aggression or internal disturbances he may by proclamation make a declaration to that effect. The effect of the issuance of the proclamation is (1) Parliament will have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State list. (2) The executive power of the Union extends to the giving of directions to any State as to the manner in which the executive power thereof, is to be exercised. (3) The Parliament will have the power, to make laws conferring powers and imposing duties on Union or other officers in respect of matters not enumerated in the Union list and in respect of matters even in State list. (4) The President may even modify the application of provisions relating to the distribution of revenues.

* * * * *

This extraordinary power is capable of abuse. If one party captures power in the Centre and different parties capture in all the other or some of the States, there may be temptation on the part of the former to resort to the easy method and draw the entire power to itself. The circumstances under which the state of Emergency had been continued by the party in power now in the Centre for 5 years certainly creates a reasonable apprehension that the said power may be abused in the future." *

15. As already indicated we do not propose to suggest any modification to article 352 or any of the provisions setting out the consequences of the issue of the Proclamation of Emergency under that article. But we suggest that a convention should be established that unless the Proclamation has been issued on the ground of actual war or a threat by some foreign power to our borders, the drastic powers conferred on the Union such as making of laws in relation to State subjects, modifying the financial arrangements, etc., should not be exercised. Another suggestion which may be

* Pages 19–20, *The Indian Federation* by K. Subba Rao.

considered is that the making of Proclamation of Emergency on the ground of internal disturbance confined to any particular part of the country should, as far as possible, be avoided. It may be interesting to note that the Joint Committee of the British Parliament which considered the proposals which were ultimately embodied in the Government of India Act, 1935, devoted a paragraph to the need for section 102 of that Act. In that context, the Joint Parliamentary Committee suggested that the expression "internal disturbance" "should be defined in terms which will ensure that for this purpose it must be comparable in gravity to the repelling of external aggression". In the contingency referred to by the Joint Parliamentary Committee, where the "internal disturbance" is confined to any particular part of the country, the more appropriate article to be invoked will be article 356 subject to our earlier remarks regarding this article.

16. We have already referred to the power that accrues to the Centre under article 353 (*a*) to issue during the operation of a Proclamation of Emergency directions to a State as to the manner in which the executive power of the State is to be exercised. While dealing with the administrative relations, we have dealt with the power of the Union to issue directions under the other provisions of the Constitution such as articles 256, 257, 344 (6), etc. Article 353 (*a*) cannot obviously be omitted. We recommend that no direction under article 353 (*a*) should be issued except after consulting, and with the approval of, the Inter-State Council. If, however, during a period of emergency, consultation with the Inter-State Council is likely to delay the issue of directions under article 353 (*a*) to meet any emergent situation which calls for immediate action, the direction may be issued without placing the matter before the Inter-State Council, subject to the condition that the Inter-State Council should, at the earliest possible opportunity, be apprised of the direction so issued, and subsequent action taken in relation to the matter in conformity with the recommendation of the Council. As in the case of the other articles empowering the Union to issue directions to the States, here also any omission to carry out the directions under article 353 (*a*) should under no circumstances be a ground by itself for the imposition of President's Rule.

(3) Special Emergency involving threat to Financial Security.

17. The provisions in the Constitution relating to the breakdown of the governmental machinery in a State and to the issue of the Proclamation of Emergency are based on precedents in the 1935 Act, but the provision relating to an emergency arising out of a threat to financial stability and credit had no precedent even in the 1935 Act.* It goes without saying that like the other two articles, namely, articles 356 and 352, the provision relating to financial emergency also has no counterpart in other federal constitutions.

18. Article 360 refers to the issue of directions by the Union, which means the Central Cabinet, requiring the States to observe "such canons of financial propriety as may be specified in the directions". The Constitution does not say what those "canons of financial propriety" are; under the article as it now stands, those canons are unnamed and unspecified. The article goes further and empowers the Union to give "such other directions as the President may deem necessary and adequate for the purpose". The expression "any such direction may include" in sub-clause (*a*) of clause (4) of the article is so comprehensive that, besides the two matters mentioned in that sub-clause, the direction may include any and every provision which the Union Cabinet "may deem necessary and adequate for the purpose". In other words, one political party in power at the Centre has the absolute discretion uncontrolled by any constitutional provision to issue any direction it pleases to another political party in power in a State. We have already indicated that failure on the part of any State to carry out the directions issued by the Union will ultimately result in the abrogation of the constitutional machinery for the administration of the State and the State being taken over under the complete and absolute control of the Union Cabinet. The article, it will be noticed, does not deal with a situation where the threat to the

* The origin of this article and the discussions thereon in the Constituent Assembly have been summarised in Section C of Appendix VI.

financial stability or credit is traceable to the acts of commission or omission of the Union. Thiru K. Santhanam in his book *Union-State Relations in India* commenting on the article says :

"Well, it may happen that the financial instability may be the result of the actions of the Union Government but still the States may have to pay the penalty." (Page 12)

It does not appear that article 360 has ever been invoked so far. Presumably, no situation of the nature contemplated by the article has ever arisen or any such situation having arisen it was considered inexpedient or undesirable to invoke the article. In either case, the article seems unnecessary. No useful purpose is likely to be served by having a provision in the Constitution which only acts as a sort of irritant in the relations of the States with the Centre. There is no need for a provision constituting the Centre as a sort of superior tribunal to watch over the finances of the States, especially in the absence of an independent authority to perform a similar function in relation to the finances of the Union. We recommend that article 360 may be repealed.

CHAPTER X.

PUBLIC SERVICES.

All-India Services.

The Committee under the terms of reference need not consider the State services, that is, the services which are under the rule making control of the State Government; nor need it consider the Central services, such as the Customs, Railways, etc. The services which bring the State Government and the Union into close contact are the all-India services. The Constitution at its inception provided for only two all-India services, namely, the I.A.S. and the I.P.S. These were in addition to the all-India services in existence before the Constitution, the I.C.S. and the I.P. In addition to the I.C.S. and I.P., the Forest Service, the Service of Engineers, the Medical Service (Civil), the Educational Service, the Agricultural Service and the Veterinary Service were constituted by the Secretary of State. The recruitment by the Secretary of State to the all-India services formed by him ceased in 1924, except for the I.C.S. and the I.P. Article 314 of the Constitution protects the conditions of service of the officers appointed by the Secretary of State.

2. Clause (1) of article 312 empowers Parliament by law to create new all-India services, if the Council of States has declared by 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. Parliament has enacted the All-India Services Act, 1951 (Central Act LXI of 1951). That Act as originally enacted applied only to the I.A.S. and I.P.S. By Central Act 27 of 1963, the Act was amended to include the Indian Service of Engineers (Irrigation, Power, Buildings and Roads), the Indian Forest Service and the Indian Medical and Health Service

3. Article 312 does not provide for consultation with State Governments much less for the consent of the States being secured before the Union makes any provision for the creation of an all-India service or regarding the conditions of service of any all-India service. The only requirement contained in the article is that the Council of States should pass the resolution referred to in the article and once this is done, Parliament can unilaterally create

an all-India service. In the Draft Constitution as settled in February 1948, there was no provision corresponding to article 312. The Ministry of Home Affairs, in its letter addressed to the Constituent Assembly Secretariat on the 15th October 1948, proposed the insertion of a provision which now figures as article 312, then numbered as article 282-A. In the marginal note to the new article, the Home Ministry indicated that it was modelled on article 226 of the Draft Constitution. Article 226 of the Draft Constitution now figures as article 249. Sardar Vallabhbhai Patel, as Home Minister, in his letter, dated the 27th April 1948, to the Prime Minister, dealing with the new provision said that matters relating to recruitment, discipline, control, etc., had been settled at a conference of the Prime Ministers (that is, Chief Ministers of the then Provinces) convened in 1946 and that details had been settled by correspondence with Provincial Governments. Sardar Patel stated that there could be no criticism because there was a remarkable unanimity between the views of Provincial Governments and those of the Central Government. He added that any pricking of the conscience on the score of provincial autonomy or on the need for sustaining the prestige and powers of Provincial Ministers was out of place.

4. It will thus be seen that to start with, the rules relating to the I.A.S. and the I.P.S. were made in consultation with, and with the concurrence of, the Provincial Governments. As already stated, there is no constitutional requirement that the State Governments should be consulted before any all-India service is created. It is no doubt true that section 3 (1) of the Act of 1951 states that before rules regulating the recruitment of, and the conditions of service of, all-India service personnel are made, the State Governments should be consulted. Consultation does not imply the consent or concurrence of the authority consulted. In other words, it is the Central Government who are supreme in the field and they can according to law brush aside the suggestions or comments of the State Governments and insert provisions in the rules relating to all-India services with which the State Governments may not agree. In fact, as indicated above, the 1951 Act was amended in 1963 clothing the Central Government with power to create several new all-India services. Of these, only the Indian Forest Service has been constituted. Although the Indian Medical

and Health Service has been constituted from February 1969, seven States have either decided not to participate or are reconsidering their earlier decision to participate in it. Again, although necessary provision has been included in the Act in relation to the Indian Service of Engineers, it has yet to come into existence. The Rajya Sabha had passed a resolution under article 312 (1) recommending the creation of the Indian Educational Service and the Indian Agricultural Service. But a large number of States having decided not to participate in the two services, no action is proposed to be taken to provide for the creation of the Educational Service and the Agricultural Service by amending the 1951 Act. (*Vide The Hindu*, dated the 15th May 1970)

The Study Team of the Administrative Reforms Commission has observed: "In a federal set-up to have an all-India service that serves the needs of the states but is controlled ultimately by the Union is an unusual feature." (Page 237, Volume I)

5. The demand that the all-India services in so far as they come within the control of the federating units should be subject to the ultimate authority of the unit itself has been voiced even at the time of the framing of the 1935 Constitution Act. The following paragraph from the Report of the Joint Parliamentary Committee explains the demand :—

"296. We have found the problem of the future recruitment of the two principal administrative services in India, the Indian Civil Service and the Indian Police, among the most difficult of those with which we have had to deal. The appointing authority must necessarily control the main conditions of service, and if control remains with the Secretary of State, there will to that extent be a derogation from the powers over the officers who are working under it which an autonomous Provincial Government might expect that the Crown should delegate to it. Such a derogation is inevitable in the case of officers recruited by the Secretary of State before the establishment of the new Constitution; but it was urged before us, and has been again emphasised by the British-India Delegation in their Joint Memorandum, that future recruitment by the Secretary of State of officers who serve a Provincial Government is incompatible with Provincial Autonomy,

and that the All-India Services ought henceforth to be organised on a provincial basis and recruited and controlled exclusively by the Provincial Governments." (Page 182, Volume I)

It will be observed from the paragraph reproduced above that even as early as 1929 and 1930 enlightened opinion in what was then known as British India was in favour of vesting the ultimate control over the all-India services in the unit. As regards the argument that the Council of States acts as the representative of the States, what this Committee has stated in relation to article 249 applies with equal force to article 312 also. As pointed out in relation to article 249, the Council of States is composed of representatives chosen in an indirect manner and the States are represented in that House with reference to the population of the respective States. There is no answer to the argument that article 312 and the Central Act of 1951 along with the rules made thereunder violate the autonomy of the States.

6. In other federal Constitutions, there is no question of any service being common to the Federal Government and the regional Governments ; the two have their own respective services. It may be that the Federal Government may execute its programmes and schemes through the agency of the regional Governments and officers subordinate to the regional Governments. So also the regional Governments may take the help and advice of the federal officers and authorities. But the question of the Federal Government exercising control over officers serving the Governments of the units does not arise in any other federation. In our country, the all-India services have come to stay. This Committee is not concerned with the advantages or disadvantages of the all-India services, which have been dealt with in great detail by the Study Team of the Administrative Reforms Commission. The Commission has contented itself by inviting attention to its Report on Personnel Administration. Relevant extracts from its Report on Personnel Administration are given in Appendix II to its Report on Centre-State Relationships. In short, the Administrative Reforms Commission has recommended that a specific functional field must be carved out for the I.A.S. and that it should comprise land revenue administration, exercise of magisterial functions and regulatory work in the States in fields other than those looked after by officers

of other functional services. There have been strong criticisms of the attitude of the Administrative Reforms Commission regarding all-India services—*See* the two articles by two members of the I.A.S. published in October-December 1969 issue of the *Indian Journal of Public Administration*. The same issue contains another interesting article which may be said to reflect the other viewpoint. The Union Home Ministry and the Secretaries' Committee are reported to have rejected the recommendation of the Administrative Reforms Commission to restrict the field of the I.A.S. to land revenue and magisterial functions, leaving the other items of work to be performed by other functional services. (*Vide The Hindu*, dated the 6th July 1970)

7. This Committee has to examine as to how best the powers of the States as autonomous units could be safeguarded while at the same time retaining the all-India services. The present method is to recruit the officers for the all-India services through the Union Public Service Commission. Their conditions of service are regulated by the Union Government of course in consultation with the States. Under the rules framed under the 1951 Act, the ultimate authority rests only with the Union and the Union Public Service Commission. The only way by which the States could be effectively and purposefully associated in the scheme of all-India services is to concede the demand put forth before the Joint Parliamentary Committee early in 1930 or so. As would be clear from the extract given above, the demand was that the all-India services should be organised on a Provincial (State) basis and that it should be recruited and controlled exclusively by the Provincial (State) Governments. Recruitment through the Union Public Service Commission may be discontinued. This State recruits personnel to the State Civil Service (Deputy Collectors). Apparently, other States also must have similar services. In addition, the gazetted ranks in the State Services, which form the main field of recruitment for promotion to the I.A.S., as distinct from direct recruitment through the Union Public Service Commission, are also filled by the State through direct recruitment with the help of the State Public Service Commission. It will be in consonance with the autonomy of the States and will improve

the administrative ability to a large extent and add strength to the all-India services, if recruitment to the all-India services is either by transfer of members of the gazetted services under the control of the State or by direct recruitment or by a combination of both these methods, if need be, by holding an examination confined to each State under the supervision of the Union Public Service Commission, if deemed necessary or expedient. With the adoption of the regional languages as the official languages by the various States, the selection of officers for manning the all-India services by a distant Central agency, not familiar with local conditions, is bound to create disharmony. Our suggestion may have to be worked out in greater detail. We have set out only the main principle which may be considered further.

8. Our suggestion will have the advantage of securing representation for all the States in the all-India services and an officer before he gets into the all-India service would have put in a sufficient length of service under the State Government. We have already referred to the attempts to create new all-India services and how the attempts had to be given up because of opposition from the States. There appears to be no justification for the constitution of any all-India service which relates to subjects within the exclusive field of the State. It cannot be denied that there may be a feeling among the non-Congress State Governments that the all-India service officers are the agents of the Centre and may not carry out the policies of those States. We, therefore, suggest that article 312 may be so redrafted as to omit the provision for the creation of any new all-India service in future.

9. With the adoption by several States of the regional languages as their official languages, the question is as to which language should be the medium of examination for recruitment to the existing All-India Services, namely, I.A.S. and I.P.S. In the scheme suggested by us, the recruitment will be on a Statewise basis. Officers of these services are liable to be posted to other States also and to serve in the Centre. In our recommendations regarding the official language, we have suggested that the link language between the Centre and the States and among the States themselves should be English. This Committee feels that the better choice would be to continue English as the medium of examination for the all-India services, although the recruitment

may be on a Statewise basis. In any case, a good and sound knowledge of English should continue to be an essential qualification for entry into any all-India service.

10. While on this subject, this Committee cannot refrain from commenting on the financial burden that is cast on the various States and other authorities and bodies subject to the control of the State Government, whenever the Central Government unilaterally enhances the salary, allowances, etc., of its employees. This sometimes prejudices the cordial relationship that should otherwise prevail between the Union and the States. One method would be for the Central Government to consult and have due regard to the views of the State Governments before the Centre increases the emoluments of its employees. This by itself may not go a long way. The best solution seems to be that the increase in emoluments of Government employees—Central and State—should, as far as possible, be uniform throughout the country making allowances for local or special conditions.

STATE PUBLIC SERVICE COMMISSIONS.

11. Connected with the topic dealt with in this Chapter, there is one provision in the Constitution which looks rather odd. It is article 317. The members and Chairman of the State Public Service Commission are appointed by the Governor. The strength of the State Service Commission and the conditions of service of the members of the Commission are regulated by the Governor. The Governor has also the power to suspend from office the Chairman or any member of the State Service Commission, in respect of whom a reference has been made to the Supreme Court for removing him from his office. But curiously enough, the actual power to remove the Chairman or any member of a State Service Commission, whether on the ground of misbehaviour or on the ground of insolvency, physical infirmity, etc., is vested in the President, which means the Union Cabinet. According to the Government of India Act, 1935, the tenure of office of the members of the Provincial Public Service Commission was determined by regulations made by the Governor in his discretion [section 265 (2) (*a*)]. In the Draft Constitution, this provision was reproduced. Article 285 (2) (*a*) of the Draft Constitution empowered the Governor in his discretion to make regulations, determining the tenure of office of the members

of the Service Commission. A Conference of the Chairmen of all Provincial Public Service Commissions and the Chairman and members of the Federal Public Service Commission was held in May 1948. One of the suggestions made at this Conference was that the Constitution should provide for the removal of members of a Public Service Commission on the same ground and in the same manner as Judges of the Supreme Court and a High Court and that accordingly, such removal should only be made by an order of the President. At one stage, the Home Ministry expressed its opinion that it should be open to the Governor to remove a member of a Public Service Commission on six months' notice without being required to ask him to show cause against such action being taken. Dr. Ambedkar ultimately proposed as a *via media* that a member of a Public Service Commission may be removed by the President or by the Governor by warrant under his Sign Manual on the ground of misbehaviour on a report made to that effect by the Supreme Court. But in the amendments placed before the Constituent Assembly* in August 1949, it was simply provided that the President alone would be the authority competent to remove the Chairman or member of even a State Public Service Commission on the ground of proved misbehaviour.

12. In this State, there was a separate Act passed by the local Legislature establishing the Madras Services Commission. The Act passed in 1929 contained provisions regarding the composition and functions of the Commission. The only Commission in existence in the whole country at the time the 1935 Constitution Act was framed was the one in this State. In the Punjab, the legislation for setting up a Public Service Commission had been passed, but the Commission had not been established by then. Thus, even before a Service Commission was thought of for other States, this State had the proud privilege of having established a Service Commission by a local Act. That Act vested the power of removal of the Chairman and members of the Commission in the Governor. The Draft Constitution also conferred power on the Governor himself to order the removal of a member or Chairman of the Public Service Commission. The requirement that the removal of the Chairman or a

* Page 573, CAD IX.

member of the State Public Service Commission should, where such removal is on the ground of misbehaviour, be only after a verdict to that effect is pronounced by the Supreme Court preceded by an inquiry may be replaced by the requirement that the verdict in this behalf should be that of the High Court preceded of course by an inquiry. This will be in consonance with the self-respect of the State and its autonomy. We recommend that the power to remove the Chairman and members of the State Public Service Commission should be vested in the Governor of the State.

13. The Tamil Nadu Public Service Commission has stated that it is not desirable to change the existing provision as found in article 317 (1) as it is a safeguard to preserve the impartiality and independence of the Public Service Commission. It has stated that the power is vested in the President and not in the Central Government. The President means and connotes only one authority and that is the Central Government, that is, the Union Cabinet. As regards the impartiality and independence of the Service Commission, the State has as much interest in maintaining them as the Union. In fact, the State is more interested in the integrity and independence of the Commission than the distant Centre. Further, the removal will, according to our suggestion, be preceded by an inquiry by the High Court and will be in accordance wih the Judgment of the High Court if it is for misbehaviour. There is no basis for the apprehension expressed by the Tamil Nadu Public Service Commission. It must be noted here that "State Public Service Commission" is a subject specified in entry 41 of the State List. Amendment of clauses (1) and (3) of article 317 in the manner suggested by us will bring the constitutional provisions bearing on the subject into full accord with the existing distribution of legislative powers in relation to this matter.

CHAPTER XI.

TERRITORY OF THE STATE.

Articles 3 and 4 (2) of the Constitution are material for a consideration of this topic. Those articles run as follows :—

"*Article* 3.—*Formation of new States and alteration of areas, boundaries or names of existing States.*—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."

"*Article* 4.—*Laws made under articles* 2 *and* 3 *to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.*—

(1) .....

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368."

2. It will be seen from the discussions in the Constituent Assembly* that there was a strong feeling expressed by some important members of the Assembly that the consent of the State concerned should be obtained before the Government of India undertook to alter the boundaries, name, etc., of the State. It will also appear from those discussions that the principal reason which weighed with some of the members who supported the official draft was that the then existing boundaries of the units were neither logical nor natural nor based on any known principle and that some device should be formulated so as to secure powers for the Union Government to redraw the political map of the country without being hampered in the process by the attitude of the units.

3. The provision as finally embodied in the Constitution merely laid down that the views of the Legislature of the State concerned should be obtained. This provision has been further altered and according to it, it is not even necessary to ascertain the views of the State. All that the Central Government need do is to simply refer the matter to the Legislature, for expressing the views of that Legislature within a specified period and Parliament, after the expiry of the period, can straightaway enact the relevant Bill, whether or not the Legislature expresses any views and without regard to the views expressed by the Legislature.

4. The constitutional implications of article 3 have been dealt with by the Supreme Court in *Babulal Parate* v. *State of Bombay* (A.I.R. 1960 S.C. 51) and *State of West Bengal* v. *Union of India* (A.I.R. 1963 S.C. 1241 at pages 1255 and 1274). In the first case, S. K. Das, J. explains the implications of the above provisions thus :—

"The proviso lays down two conditions : one is that no Bill shall be introduced except on the recommendation of the President, and the second condition is that where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has to be referred by the President to the Legislature of

* See Appendix VII for a summary of these discussions.

the State for expressing its views thereon. The period within which the State Legislature must express its views has to be specified by the President; but the President may extend the period so specified. If, however, the period specified or extended expires and no views of the State Legislature are received, the second condition laid down in the proviso is fulfilled in spite of the fact that the views of the State Legislature have not been expressed. The intention seems to be to give an opportunity to the State Legislature to express its views within the time allowed; if the State Legislature fails to avail itself of that opportunity, such failure does not invalidate the introduction of the Bill. Nor is there anything in the proviso to indicate that Parliament must accept or act upon the views of the State Legislature."

The contention that article 3 should be construed with reference to the doctrine of democratic process was repelled and the difference between the provision in the American Constitution and our Constitution pointed out :—

"In plain and unambiguous language, the proviso to Art. 3 of the Constitution states that where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill must be referred by the President to the Legislature of the State for expressing its views. It does not appear to us that any special or recondite doctrine of "democratic process" is involved therein. Learned counsel for the appellant has invited our attention to Art. IV, S. 3, of the American Constitution which says 'inter alia' that "no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States without the consent of the Legislatures of the States concerned as well as of the Congress." That provision is quite different from the proviso we are considering: the former requires the consent of the State Legislature whereas the essential requirement of our proviso is a reference by the President of the proposal contained in the Bill for the expression of its views by the State Legislature.... we see no reasons for importing into the construction of Art. 3 any doctrinaire consideration of the sanctity of the rights of States."

Sinha C. J., who delivered the majority Judgment in the second case, set out the position as follows :—

"What appears to militate against the theory regarding the sovereignty of the States is the wide power with which the Parliament is invested to alter the boundaries of States, and even to extinguish the existence of a State. There is no constitutional guarantee against alteration of the boundaries of the States. By Art. 2 of the Constitution the Parliament may admit into the Union or establish new States on such terms and conditions as it thinks fit, and by Art. 3 the Parliament is by law authorised to form a new State by redistribution of the territory of a State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, increase the area of any State, diminish the area of any State, alter the boundaries of any State, and alter the name of any State. Legislation which so vitally affects the very existence of the States may be moved on the recommendation of the President which in practice means the recommendation of the Union Ministry, and if the proposal in the Bill affects the area, boundaries or name of any of the States, the President has to refer the Bill to the Legislature of that State for merely expressing its views thereon. Parliament is therefore by law invested with authority to alter the boundaries of any State and to diminish its area so as even to destroy a state with all its powers and authority."

Subba Rao J. (as he then was), in a dissenting Judgment, observed :—

"It is said that Parliament can destroy the State under Art. 3 of the Constitution and therefore, nothing more untoward can happen to a State if this limited power is conceded, as a larger power has already vested in the Parliament. Article 3 only enables the Parliament to make a law for the formation of a new State, alteration of boundaries of any State, increase or decrease of the area of any State or alteration of the name of any State. Such a power is expressly given to the Parliament and, therefore, it can function under that Article."

Thiru Asok Chanda in *Federalism in India* comments on this point as follows :—

"It is important to note that the Act * does not enjoin that the concurrence of the state legislature should be obtained, or the wishes of the people ascertained by a referendum, as a prelude to parliamentary legislation; it merely prescribes that the President should refer the bill to the states. The legislation itself does not require that it must be passed by a two-thirds majority of members present and voting, or that an absolute majority of the total strength should be obtained in addition ; it is sufficient to have it passed by a simple majority. In other words, the provision is treated as falling within the scope of ordinary legislation and not of constitutional amendment.

.....The existence of this provision had thus enabled the dominion government, even before the Constitution had come into force, to order the enlargement of the area and alteration of boundaries of the state of Bombay and the absorption and exchange of enclaves elsewhere for the convenience of administration.

This article, as now amended, gives Parliament, in other words the party in power at the Centre, the right to undertake a reorganisation of the states without their consent and without even waiting to ascertain their views.

In the U.S.A., the formation of a new state involving adjustment of territories of one or more existing states is permissible only with the consent of the legislatures of the states affected. In Australia, the approval of the majority of the electors of the states is required in addition to the consent of the legislatures. Herein lies the basis of the concept of the indestructibility of a state in a federation. The Indian provision is thus unusual, dispensing, as it does, with the concurrence of the states affected as a prerequisite of reorganisation." (Pages 46–47)

5. It may be useful, in this connection, to refer to similar provisions in other federal Constitutions. By article 5 of the Federal Constitution of the Swiss Confederation, the territory of the Cantons is guaranteed by the Confederation. Sub-section (1) of section 3 of article IV of the American Constitution provides

* (*sic*) article.

that no new State shall be formed or erected within the jurisdiction of any other State, nor any State formed by the junction of two or more States or parts of States without the consent of the Legislatures of the States concerned. Sections 123 and 124 of the Commonwealth of Australia Constitution Act go a step further and according to those sections, not only the consent of the Legislatures of the States affected is necessary, but the approval of the majority of the electors of the States also is required. The Constitution of the German Reich, 1919, also required the consent of the States for alteration of their boundaries. Again, section 3 of the British North America Act, 1871, empowers the Canadian Parliament to increase, diminish or otherwise alter the limits of any Province, only with the consent of the Legislature of the Province and that too only upon such terms and conditions as may be agreed to by that Legislature. Although the South African Constitution is said to be unitary in character, it prohibits Parliament from altering the boundaries of any province, dividing a province into two or more provinces or forming a new province out of provinces within the Union except on the petition of the provincial council of every province whose boundaries are affected thereby—*See* section 149 of the South Africa Act, 1909.

6. The linguistic States were formed to satisfy the aspirations of the entire nation and to facilitate the working of the organs of the State on a wider democratic basis. Now that the boundaries of the various States have been refixed in accordance with the sentiments of the people concerned, it is but natural that provision should be made to safeguard the territorial integrity of the various States from undue interference by the Centre. It is not difficult to imagine a situation in which a party, which has no belief in a federal set up and which is pledged to the setting up of a unitary Government for the whole country, captures power at the Centre. If this eventuality fructifies, there is nothing in the Constitution to prevent the Centre from doing away with the linguistic division of the States or for that matter to single out any particular State for absorption in any neighbouring State or from converting it into a Centrally administered area. All this could be achieved by a simple Act of Parliament passed by an ordinary majority and the State will be helpless. One of the essential points of the federal principle is that the Central or the

National Government should not have the power to unilaterally redraw the map of the country by forming new States or by altering the boundaries of the existing States.

7. It was originally provided in the Draft Constitution that the consent of the Legislature of the State concerned should be obtained before altering the boundaries, name, etc., of that State. Considering the current disputes regarding the borders between various States, it may not be advisable or expedient to insist on the consent of the States for the alteration of their boundaries. In the replies received to the Questionnaire issued by the Committee, a suggestion has been made that disputes relating to borders between two States should be decided by an independent Judicial Tribunal consisting of retired Judges and that the decision of that Tribunal should be made final and binding. But it should be noted that instances are not wanting where the awards made by Commissions presided over by retired Judges of the Supreme Court and High Court on the border disputes have been totally disregarded or substantially modified. Two alternatives are open. One is to provide in the Constitution for the consent of the States concerned being obtained on the analogy of similar provisions in the Constitutions of the Federations of the traditional type or to set up an independent Judicial Tribunal for deciding the issues. If either of the above alternatives is found unacceptable, it is for consideration whether it may be provided that the opinion of the people of the area concerned should be ascertained. A similar provision is to be found in the Australian Constitution, though this is in addition to the consent of the Parliament of the State concerned. In our country, this method was employed to ascertain the wishes of the people of Goa on the question of the merger of that territory with Maharashtra or Gujarat—*See* the Goa, Daman and Diu (Opinion Poll) Act, 1966 (Central Act 38 of 1966).

CHAPTER XII.

REPRESENTATION OF STATES IN PARLIAMENT.

In all the four federations of the traditional type, namely, U.S.A., Canada, Switzerland and Australia, in the Lower House (the House corresponding to our House of the People), the federating units are represented with reference to their respective populations, with provision for periodic adjustment of the representation of the federating units with reference to the change in population. Except in Canada, the federating units are represented in the Upper Houses of the other Federations on an equal basis. In Canada, the Senate is entirely a nominated body and the Senator holds office for life. In the U.S.A., the Senate is composed of two Senators from each State elected by the people thereof and each Senator has one vote. In Switzerland, the Upper House, known as the Council of States, consists of two deputies appointed by each Canton. It is interesting to note that the Cantons determine the franchise, method of election and duration of office of their deputies to the Council of States subject to federal law. In Australia, the Senate is composed of Senators for each State directly chosen by the people of the State. Each State elects ten Senators.

2. It will thus appear that the normal principle followed in a federation is that the units of the federation are equally represented in the Upper House, that is to say, every federating unit is represented by the same number of members. The provisions relating to the Council of States in our Constitution are based upon those relating to the Upper House contained in the 1935 Constitution Act. The allocation of seats in the Fourth Schedule to the Constitution is solely on the basis of population of each State as is the case with the House of the People.

Granville Austin has referred to the view contained in the Nehru Report that the example of the United States Senate was not suitable to our country "in view of the great difference in size and population" of the units and to the recommendation in the Report that in the Upper House, the number of members

from the smaller Provinces could be increased so that their relationship to the bigger Provinces "should not be wholly disproportionate"

The learned author has also referred to the opinion expressed at the Round Table Conference. The Federal Structure Sub-Committee is reported to have doubted if equal representation "would commend itself to general public opinion". The reason for the rejection by the framers of our Constitution of the principle of equal representation is given as follows by the author :—

"The Union Constitution Committee report offered no explanation for its rejection of equal representation, but we may surmise that the committee members agreed with the views expressed in the Nehru Report and at the Round Table Conference. They may also have feared, as B.N. Rau did, that if they allowed equal representation for all the constituent units of the federation, the provinces 'would be swamped' by the Princely States." (Page 158).

The fixation of the number of representatives in the Council of States with reference to population is a feature peculiar to our Constitution not found in other federations and secures greater representation for the more populous States. Equal representation for the States in the Upper House would make it more effective and provide for exercise of equal voting rights by all the constituent units which will be in accord with the true federal concept.

3. We have already referred to the arguments against equal representation of States in the Council of States set out in the Nehru Report and at the Round Table Conference. The Nehru Report did not favour the idea of equal representation on the ground that there was large difference in size and population of the federating units. The Committee considers that it is for this very reason that equal representation is provided for in the Upper Houses of the other federations. The Upper House in the other federations is considered to be the representative of the States. At the Round Table Conference, it was apprehended that public opinion may not accept the suggestion. Autonomy

for the various units was first introduced in this country in 1937. With the attainment of independence in 1947, the units have gained in stature and functions and the federal principle has been in operation ever since 1947. There is no reason to apprehend that there would be any opposition to the equal representation of States in the Upper House. Granville Austin has referred to the Upper House being swamped by the then Princely States. This ground has now disappeared. The idea at any rate needs examination in consultation with the other States.

The naming of the Upper House as the Council of States suggests that the States should have equal representation and equal voice in this Chamber; but the rejection of this principle has raised, not unnaturally, apprehensions that the counsel of the less populous States might go unheeded and their needs disregarded in the formulation and execution of national plans and policies. It is desirable, now that the States have been reorganised, to limit the size of the Upper House by giving the States equal representation, thus, making it a more compact, effective and useful instrument in the shaping of policies.

4. The Council of States does not also represent exclusively the federal principle as the President nominates twelve members to represent literature, science, art and social service. In our view there should be no nominations to this body.

Obviously the Council of States as its name implies should have equal representation of all States. Whether it should be two, as in the U.S.A., or more is another matter. There is hardly any justification to relate the number of seats to be allotted to a State to its population. The States are co-equals in all other fields and there is little cause to differentiate among them in their representation in the Council. Under the present dispensation, a small number of more populous States can swing the balance against the majority of States—hardly the democratic way of life.

A smaller Chamber would endow the Council with greater dignity and its revisionary powers could also be exercised with greater discretion and circumspection.

5. In all Federal Constitutions, the Lower House, corresponding to the House of the People in our country, consists of representatives of the people elected with reference to the population of the units. The Constitutions provide for periodic adjustment of their representation with reference to the population figures. Same is the case in our country also. But the position has, however, changed with the implementation of family planning programmes. Some States including Tamil Nadu have been in the forefront in the implementation of these programmes. As a consequence, the number of representatives of these States in the Lower House has been reduced. This is likely to impede the further implementation of the family planning programmes. Some formula has, therefore, to be devised to offset the disadvantages accruing to States on this account. One suggestion, which is worthy of consideration, is that the number of seats fixed in 1951 should be fixed as the irreducible minimum. In other words, the number fixed in that year should remain unaltered. At the same time, the possibility of increase in population in some States cannot be ruled out. Where there is an increase in population, seats may be increased proportionately. But here again, the Constitution should fix a maximum beyond which there should be no further increase. We suggest that the representation of the States in the Lok Sabha may be fixed on the basis mentioned above.

CHAPTER XIII.

LANGUAGE.

The provisions of the Constitution relating to language are articles 120, 210 and Part XVII. Article 120 deals with the language to be used in Parliament. Section 3 (1) (*b*) of the Official Languages Act, 1963 (Central Act 19 of 1963), as amended by Central Act 1 of 1968, provides for the continuance of the use of the English language, in addition to Hindi, for the transaction of business in Parliament. Article 210 relates to the language to be used in State Legislatures. Provision has been made for the continuance of the use of the English language for the transaction of business in the Legislature of this State—*See* the Tamil Nadu State Legislature (Continuance of Use of English Language) Act, 1964 (Tamil Nadu Act 38 of 1964). Part XVII of the Constitution consists of four chapters. Chapter I deals with the language of the Union. Chapter II deals with the official languages of the States and the language to be used in communications between a State and the Union or between one State and another. Chapter III relates to the language of the Supreme Court and High Courts and the language to be employed in legislative enactments. Chapter IV contains special directives.

Thiru H. M. Seervai in his *Constitutional Law of India* states: "The provisions of our Constitution relating to language have raised no serious questions of legal interpretation, but they have raised serious political problems of a far-reaching nature." (Page 971). The learned author has drawn attention to the Chapter on language captioned "Language and the Constitution —The half-hearted compromise" in *The Indian Constitution— Cornerstone of a Nation* by Granville Austin. As pointed out by Thiru Seervai, Austin has given "a well documented and vivid account of the forces at play". The problem relating to language and the solution embodied in the Constitution have been described by Austin thus—

"India's problem has been and is, rather, one of sub-national sentiment and sub-national competition, which often take the form of linguistic rivalries. In the Assembly, these

rivalries had not assumed their present proportions or many of their present guises; they were expressed as resistance to the linguistic chauvinism of another sub-national group, the Hindi speakers—who came, unfortunately, to be represented by a group of extremists. The language provisions of the Constitution were designed, in a typically Indian fashion, to meet such a situation: Assembly members believed that India should, ideally, have an indigenous national language; Hindi (or Hindustani) was the most suitable, so it was named for the role. Yet for Hindi to be in practice the national language was impossible, for the only language in national use was English. Moreover, the other sub-nations feared the introduction of Hindi and had pride in their own languages. Hence the Constitution makes clear what the national ideal is, and then, realistically, compromises, laying down how the nation is to function, linguistically speaking, until the ideal is achieved. More than this, as the furious controversy among the members testifies, the Assembly was unable to do. Yet the language provisions are not just an unhappy compromise; they have a more positive side. They show that the large majority of the Assembly believed that the use of many Indian languages and of English was compatible with national unity and with the evolution of a national spirit." (Pages 306—307)

2. Under the terms of reference to the Committee, it has to keep in view the integrity of the country as a whole. The Committee is not concerned with the languages adopted by the States for official use within their respective territories. What it has to consider is the language that should be used by the Central Government in its offices including the Central Secretariat and in its dealings with the various States and the language to be used in the Supreme Court and the High Courts, as also the language to be used in Bills and Acts of Parliament. Section 3 of Central Act 19 of 1963 as amended by Central Act 1 of 1968 makes detailed provisions regarding the language to be used for official purposes of the Union. According to that section, the English language may also be used for the official purposes of the Union. It also provides that the English language should be used for purposes of communication between the Union and a non-Hindi State. Where Hindi is used for purposes of communication between a Hindi State and a non-Hindi State, the Hindi

communication should be accompanied by an English translation. Where Hindi or the English language is used for purposes of communication between one Ministry or Department or office of the Central Government or any corporation or company under the control of the Central Government and another, a translation of the communication in the other language should also be provided. The Act requires that both Hindi and the English language should be used for instruments made or issued by the Central Government in which the public are interested. These provisions will remain in force until resolutions for the discontinuance of the use of the English language for the above-mentioned purposes have been passed by the Legislatures of all the non-Hindi States.

3. It will be seen that English is being continued as an ancillary language, only by an Act of Parliament and that it is always open to Parliament by another Act passed by a simple majority to annul the provisions of the Act of 1963. The provision relating to the furnishing of translation where the English language is used in inter-departmental correspondence seems to assume that the person using the English language has a good knowledge of Hindi as well. Hindi is one of the regional languages specified in the Eighth Schedule. But when compared with other regional languages, it cannot be said that Hindi is the only language suited for being adopted as the sole official language of the Union. Austin has this to say on the point:

"Hindustani might be the language of the masses, but was it sufficiently developed to meet the needs of science, technology, and politics ? Bengali and Tamil were much more developed and better met the needs of a modern state; yet even they were not wholly adequate to the task,.....". (Page 272)

It is a matter of history that no provision in the Constitution has evoked such heated discussion as the provisions relating to language. The provisions were adopted at a time when the States had no effective say in the matter. With the birth of linguistic States and the attainment of adulthood by them, it is desirable to review the provisions of the Constitution relating to language, if the unity of the country is to be strengthened.

4. Whatever the label that constitutional lawyers may attach to our Constitution on a scientific analysis of its provisions, it is an admitted fact that the Constitution is basically a federal one. This fact has been set out in an earlier Chapter of this Report. In a federation comprising a country of continental dimensions with 15 languages recognised by the Constitution itself (not to speak of the other languages in use in our country such as Thulu), it seems desirable to evolve some formula which will meet with the approval of the various linguistic groups. It may not be out of place here to invite attention to the provisions of some foreign Constitutions relating to language, which had to solve problems similar to those which this country faces. Section 133 of the British North America Act, 1867, provides for the use of English or French in debates in the Canadian Parliament and in any pleading or process in or issuing from any court of Canada. The Acts of the Canadian Parliament have to be printed and published in both those languages. Article 116 of the Swiss Constitution states that German, French and Italian shall be the official languages of the Confederation and that those three languages as well as Romanche shall be the national languages of the country. Although the South Africa Act, 1909, sets up a unitary Constitution, section 137 of that Act provides that both the English and Dutch languages shall be the official languages of the Union and that they shall be treated on a footing of equality possessing and enjoying equal freedom, rights and privileges. The section states that all records, journals, and proceedings of Parliament shall be kept in both the languages and that all Bills, Acts and notices of general public importance or interest issued by the Government of the Union shall be in both languages.

5. We realise the great difficulties—administrative and otherwise—that are likely to be encountered in declaring all the languages specified in the Eighth Schedule to the Constitution as the official languages of the Union. Nor will it be expedient or desirable to declare any one language as the official language as now provided for in the Constitution. The only argument against the retention of English as the official language for all purposes is that it was until independence the mother tongue of the Britisher who ruled the country. But as pointed

out by Austin, the large majority of the members of the Constituent Assembly believed "that the use of many Indian languages and of English was compatible with national unity and with the evolution of a national spirit".

Parliament consists of representatives from States whose official languages differ from one another. It is, therefore, necessary that the members should be given the option of addressing the House either in English or in any of the languages specified in the Eighth Schedule to the Constitution. As regards the official language of the Union, we are afraid there is no alternative except to continue the English language. Similarly, English should continue as the link language among the States *inter se*. This need not be for an indefinite period. The Act of 1963 furnishes the necessary guidelines. All that is now required is that the guarantees embodied in that Act should be incorporated in the Constitution itself with suitable modifications.

6. The High Courts and the Supreme Court act as the guardians of not only the Fundamental Rights guaranteed by the Constitution, but they are also entrusted with the important task of enforcing the rule of law not only in relation to the actions of individuals as such, but in relation to the activities of Governments and Legislatures also—Union and State. In our recommendations relating to the Supreme Court, we have suggested that the provisions for appeals in ordinary civil and criminal cases from the judgments of the High Courts to the Supreme Court should be omitted and that an appeal should lie from the judgment of a High Court to the Supreme Court only in cases involving constitutional issues. That apart, the Supreme Court will continue to deal with inter-State disputes and disputes between a State or States on the one hand and the Union on the other. If a degree of uniformity in judicial administration is to be maintained, it is absolutely essential that the language of all the High Courts and of the Supreme Court should be one and the same. In this view, we see no choice but to suggest that English should continue to be the language of the Supreme Court and the High Courts.

7. We may now take up Bills and Acts. According to article 348, all Bills and Acts—Central or State—should be in the English language. This provision is subject to the power of Parliament to provide otherwise. Clause (3) of the article seems to suggest that it is open to the State Legislature to prescribe the language to be used in Bills and Acts of the State. Parliament has not chosen so far to exercise the power conferred on it by clause (1) of article 348. Section 5 of Central Act 19 of 1963 merely states that a Hindi translation of any Central Act published under the authority of the President should be deemed to be the authoritative text thereof in Hindi. In this State, the Tamil Nadu Official Language Act, 1956 (Tamil Nadu Act XXXIX of 1956), has declared Tamil to be the official language of the State. By notifications issued from time to time under that Act, Tamil has been progressively introduced in the various administrative offices under the control of the State Government. Section 5 of the Tamil Nadu Act of 1956 provides for the use of Tamil in Bills and Acts on and from a date to be notified by the State Government. No notification under that section appears to have been issued so far. Bills and Acts of this State are, therefore, being published in English and Tamil as well. If English is to continue to be the language of the High Courts and the Supreme Court, it is necessary that an authorised version of all State Acts and Bills in the English language should continue to be available in the case of those States which adopt any of the regional languages for use in their Bills and Acts. Clause (3) of article 348 contains the necessary provision in this regard.

8. We have already stated that the Committee is not concerned with the official languages of the various States. What concerns us, however, is regarding the offices of the Central Government in the States. The public come into daily contact with these offices. Several States have adopted the regional languages as their official languages. In this State, Tamil is being introduced by stages in the offices under the control of the State Government. While English should continue to be the language of communication between one State and another and between the Union and the State, we see no great advantage in continuing English as the language for transaction of business with the public in the offices of the Central Government situated in the various

States. It will make for administrative convenience, if the offices of the Central Government situated in the various States use the official languages of the respective States. Besides, this will bring the public at least emotionally nearer the administrative apparatus of the Union and make the people feel that the Central administration is as much their own as the administration at the State level. Moreover, with the adoption by several States of the regional languages as their official languages, it is necessary that all communications by and between Central Government offices in a State and the Government of the State and its offices should be in the official language of the State. It follows that members of the Central services employed in a State should be well conversant with the official language of the State.

CHAPTER XIV.

TRADE AND COMMERCE.

The provisions of the Constitution relating to freedom of trade and commerce are contained in Part XIII. The importance of these provisions, from the point of view of the States, is obvious from the discussions in relation thereto in committees and the Constituent Assembly.* The provisions of Part XIII may be summarised as follows :—

Trade, commerce and intercourse throughout the country are free. Parliament can place restrictions on the freedom of trade, commerce and intercourse in the public interest, except that it cannot give preference to one State over another or make any discrimination between one State and another by virtue of any entry relating to trade and commerce in any of the Legislative Lists, unless it is necessary to do so to meet a situation created by scarcity of goods in any part of the country. It will be noticed that the restrictions, which Parliament is competent to impose, need not necessarily be reasonable. On the other hand, the States cannot give preference or make any discrimination by virtue of any entry relating to trade and commerce. But they can by law impose reasonable restrictions on the freedom of trade and commerce in the public interest, if the President accords his previous sanction to the introduction of the requisite Bill in the State Legislature or subsequently assents to the Bill after it is passed by the State Legislature. The State can impose taxes on goods imported from any other State so long as they are not discriminatory. The power of Parliament and the State Legislatures to create monopolies in favour of Government or of bodies controlled by Government is also saved. Parliament is empowered to set up an authority for carrying out the purposes of articles 301 to 304.

2. The provisions relating to trade and commerce in our Constitution had their origin in section 297 of the Government of India Act, 1935. That section in its turn was based on section 92 of the Australian Constitution. Section 92 of the Australian Constitution

* For a summary of these discussions, *see* Appendix VIII.

states that trade, commerce and intercourse among the States shall be absolutely free. Nicholas in *The Australian Constitution* has commented on articles 301 to 307 of our Constitution. He says :

" The draftsmen would appear to have studied the decisions of Australian courts and of the Privy Council and to have sought to avoid Australian controversies while applying the section to Indian conditions. Section 301 provides that, subject to other provisions, trade, commerce and intercourse throughout the territory of India shall be free—a section almost identical with s. 92 of the 1891 draft of the Constitution of the Commonwealth and not limited to inter-State dealings. Section 302 gives Parliament power to impose such restrictions on trade between States as may be required in the public interest. Section 303 forbids preference by central or State authority. Section 304 deals with discrimination in taxes." (Pages 283—284)

Thiru H. M. Seervai, in his *Constitutional Law of India*, however, states :

" Difficult and complicated problems are raised by Part XIII of our Constitution due largely to defective drafting." (Page 980)

Das J. in *Automobile Transport (Rajasthan) Limited* v. *State of Rajasthan* [(1963) 1 S.C.R. 491 at page 520] observed :

".....there is such a mix-up of exception upon exception in the.....articles in Part XIII that a purely textual interpretation may not disclose the true intendment of the articles."

Thiru Seervai, after dealing with the leading decisions of the Supreme Court on the interpretation of Part XIII, has this to say :

" It is submitted therefore that the whole subject of the freedom of trade and commerce will have to be reconsidered if legal results are not to be based on contradictory premises." (Page 996)

This difficulty seems to have been anticipated by Sir Ivor Jennings. In his book *Some Characteristics of the Indian Constitution*, he has criticised Part XIII thus :

" The new generation of Australian lawyers would like to get rid of section 92 of their Constitution, which seems to them to be more trouble than it is worth. It seems certain that in twenty

years Indian lawyers will be able to point out that the Australian lawyers do not know what trouble is. Part XIII exhibits the major defect of the Indian Constitution, a reluctance to trust the Legislatures combined with a reluctance to allow the courts to engage in judicious law-making through the interpretation of broad and general provisions. If nobody except the Constituent Assembly can be trusted to make laws, why not make the laws once for all and enact a one-clause Constitution: 'Nobody shall change the laws of India?'." (Pages 82-83)

3. This Committee is concerned with the question as to how the rights of the States to deal with trade and commerce should be secured as against interference by Parliament or the Union Government. Article 19 (1) (*g*) guarantees to individual citizens the right to carry on any occupation, trade or business. Part XIII of the Constitution guarantees the free flow of goods and services and their movement. We have already set out the provisions of this Part. Section 92 of the Australian Constitution guarantees freedom of inter-State trade only, but leaves intra-State trade severely alone. While the power of Parliament under article 302 to impose restrictions on inter-State trade and commerce may remain, we see no point in empowering Parliament to deal with trade and commerce within a State. "Trade and commerce within the State" is a matter within the exclusive sphere of the State (entry 26 of the State List). This power of the State is subject to entry 33 of the Concurrent List. In our recommendations relating to the Legislative Field, we have proposed the transfer of entry 33 from the Concurrent List to the State List. We, therefore, recommend that article 302 may be so amended as to omit the reference to intra-State trade and commerce and to confine it to inter-State trade and commerce.

4. Another point to be noticed in connection with article 302 relates to the nature of the restrictions which Parliament is competent to impose under that article. We have already stated that those restrictions need not necessarily be reasonable. A comparison of articles 302 and 304 (*b*) shows that whereas the reasonableness of the restrictions imposed by a State law under article 304 (*b*) is justiciable, there is no question of the Court examining the reasonableness of the restrictions imposed by Parliament under article 302, once the Court is satisfied that the law made by

Parliament is in the public interest. Thus, Parliament is free from interference from Courts on the ground of absence of substantive or procedural reasonableness of such restrictions. Whatever might have been the justification for vesting such uncontrolled power in Parliament at the time of the framing of the Constitution, with the growth of Statehood and the emergence of federalism as envisaged by the Constitution makers, this Committee is of the opinion that as in the case of State Legislatures, when exercising their power under article 304 (*b*), the restrictions to be imposed by Parliament under article 302 also should be reasonable. Right to freedom of trade and commerce is a basic right and in the initial stages this provision was actually included in the Chapter relating to Fundamental Rights and it was only later on that the provision was transferred to a separate Chapter. The seven freedoms enshrined in article 19 are also subject to restrictions by Parliament and State Legislatures. But such restrictions, whether imposed by Parliament or a State Legislature, should, under article 19 (2) to (6), be reasonable. This Committee accordingly recommends that in article 302, the word " reasonable " may be inserted before the word " restrictions ". Article 303 (2) enables Parliament to deal with scarcity conditions. We have suggested elsewhere in our Report that, before any Bill affecting the interests of the States is introduced in Parliament, the opinion of the Inter-State Council should be obtained and placed before Parliament at the time of its introduction. In this view, we consider that article 303 needs no modification.

5. Article 304 is an enabling provision. The taxes to be imposed under the article should not be discriminatory and the restrictions which the State Legislature may impose should be reasonable and should be in the public interest. So far, article 304 calls for no comments by us. The proviso to the article requires that before any Bill or amendment relating to imposition of restrictions on the freedom of trade and commerce is introduced or moved in the State Legislature, the previous sanction of the President should be obtained. It will be observed that such previous sanction is necessary in respect of restrictions to be imposed not only on inter-State trade and commerce, but it is required even for regulating or restricting commercial activities within the borders of a State. In dealing with the distribution of legislative powers, we have

suggested that all provisions in the Constitution relating to reservation of Bills passed by State Legislatures for the consideration and assent of the President [except article 288 (2)] should be omitted altogether. Whether the restrictions imposed by an Act of a State Legislature on the freedom of trade and commerce are reasonable and whether they are in the public interest for purposes of article 304 (*b*) are questions to be decided ultimately by the High Court or the Supreme Court. If the Court finds that the restrictions are unreasonable or opposed to the public interest, the 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 State Legislatures. We, therefore, recommend that the proviso to article 304 be omitted.

6. Article 305 is a saving provision and needs no change.

7. Article 307 refers to the appointment of an authority similar to the Inter-State Commerce Commission in the U.S.A. The setting up of the authority is left to Parliament. No authority as contemplated by the article appears to have been set up so far. In the light of our suggestion for the setting up of an Inter-State Council, we see no particular advantage in establishing the authority contemplated by the article.

CHAPTER XV.

PUBLIC ORDER.

Public order subject to the exception specified in entry 1 of the State List is within the exclusive jurisdiction of the State. There have been of late instances in which in the sphere of law and order in certain States the Union Government and the Governments of the States concerned have confronted each other. The principal instrument available to the Government of a State for the maintenance of peace and tranquillity is the police force. "Police, including railway and village police" is a State subject. The disputation between the States and the Union in relation to maintenance of public order within a State centres round the stationing and operation of the Central Reserve Police Force by the Union in the States, without obtaining the consent of, or even consulting, the State concerned and in some cases contrary to the express wishes of the Government of the State. This Committee feels that the question as to how far the Centre could utilize the Central Reserve Police for the maintenance of law and order within a State deserves examination.

2. The Central Reserve Police Force is constituted and maintained by the Central Government. Ordinarily speaking, at any rate so far as a lay man is concerned, it would appear that this is nothing but a Police force charged with the maintenance of public order as its very designation indicates, as distinct from an armed force. Two points arise for consideration. One is the constitutionality of the law under which the Central Reserve Police has been formed and is functioning and the other is the desirability or expediency of the Centre utilizing this Force in States without the consent of the latter.

3. We may first deal with the constitutional issue. The statute governing the Central Reserve Police is the Central Reserve Police Force Act, 1949 (Central Act LXVI of 1949). The historical

background to the passing of this Act is set out in the Statement of Objects and Reasons appended to the relevant Bill, thus :—

* " The ' Crown Representative's Police Force ' which was raised by the late Crown Representative as a reserve force to aid Indian States in the maintenance of law and order in times of emergency, has been retained as the Central Reserve Police Force even after the lapse of paramountcy.

2. The Crown Representative's Police Force Law, 1939, which was made under the Foreign (Jurisdiction) Order, 1937, to provide for the constitution and regulation of the Force, automatically ceased to have effect from the 15th August 1947, but no enactment has been made for the regulation and control of this Force by the Government of India after the 15th August 1947. The objects of the proposed Bill are to replace the old Crown Representative's Police Force Law, 1939, and thus provide for the organisation, control and regulation of the Central Reserve Police Force by the Central Government. For the purposes of this Bill, this Force falls within the category of ' any other armed forces raised or maintained by the Dominion ' mentioned in paragraph 1 of List I of the Seventh Schedule to the Government of India Act, 1935, as adapted ".

The following points emerge from the Statement of Objects and Reasons :—

(1) Before the 15th August 1947, the Crown Representative's Police Force was raised by the then Crown Representative.

(2) The Crown Representative's Police Force was a reserve force to aid Indian States in the maintenance of law and order in times of emergency.

(3) The Crown Representative's Police Force was governed by the Crown Representative's Police Force Law, 1939, made under the Indian (Foreign Jurisdiction) Order in Council, 1937.

(4) When paramountcy lapsed on the 15th August 1947, the law of 1939 also ceased to be effective.

* Page 136, Part III-A of the *Fort St. George Gazette*, dated the 24th January 1950.

(5) However, the Crown Representative's Police Force was retained as the Central Reserve Police Force, although the law of 1939 had ceased to be in force.

(6) No enactment was made for the regulation and control of the Central Reserve Police after the 15th August 1947. The Act of 1949 took the place of the law of 1939.

It is relevant to state here that the Order in Council of 1937 mentioned above was made by the British Government under the Foreign Jurisdiction Act, 1890 (53 and 54 Vic. Ch. 37).

4. It will be clear from the British Statute of 1890 and the Order in Council that the Order had nothing to do with the then British India and that it was applicable to Indian States only. It will also be clear that the Order was issued not by the Governor-General in Council as head of the Government responsible for public order in British India but by the British Government, as the supreme authority dealing exclusively with the relations of that Government with the Indian States. Before the commencement of the Government of India Act, 1935, on the 1st April 1937, there was no such functionary as Crown Representative and the Governor-General in Council had wide powers in relation to Indian States. The 1935 Act provided for the appointment of a Crown Representative to deal exclusively with Indian States. In fact, the Police Act, 1888 (Central Act III of 1888), although according to its extent clause was applicable only to British India, had been applied before the 1st April 1937 to certain parts of Indian States under the Order in Council of 1902. Police districts embracing parts of both British India and Indian States were created for purposes of the Act of 1888. With the commencement of the 1935 Act, "police" became an exclusively Provincial subject and the Government of India had no competence in relation to police. The Central Act of 1888 was so adapted in 1937 as to confine any police district to be constituted under it to British India, the powers and jurisdiction of a general police force in relation to the Indian States being left to be dealt with by the Crown Representative. The function of the Governor-General in Council in relation to Indian States having been entrusted to the Crown Representative, the latter made the Police Force Law of 1939.

5. With the attainment of Independence, paramountcy lapsed and along with it the Police Force Law of 1939 issued by the Crown Representative by virtue of the power of paramountcy also ceased to have effect. The Foreign Jurisdiction Act, 1890 (which was the primary source of power for making the Police Force Law of 1939) has since been repealed in its application to India by the British Statutes (Application to India) Repeal Act, 1960 (Central Act 57 of 1960). The Crown Representative's Police Force having been retained even after 1947 some legal base had to be found for its continued existence and that is why Central Act LXVI of 1949 was placed on the statute book. The point arises whether the Central Act of 1949 was within the competence of the Dominion Legislature. The Statement of Objects and Reasons to the relevant Bill states that the Central Reserve Police "falls within the category of 'any other armed forces raised or maintained by the Dominion'," mentioned in entry 1 of List I in the Seventh Schedule to the 1935 Act as adapted in 1947. It must be mentioned that normally the Statement of Objects and Reasons does not contain any reference to the legislative entry or the article of the Constitution with reference to which an enactment is proposed, except in the case of formal Bills such as Appropriation Bills.

6. The question is whether the Central Reserve Police Force can be said to be an armed force raised or maintained by the Dominion. The Act does not itself indicate what the duties of the members of the Force are. All that section 7 states is that it shall be the duty of every member of the Force promptly to obey and to execute all 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 and for whose apprehension sufficient grounds exist. But rule 25 of the Central Reserve Police Force Rules, 1955, throws abundant light on the principal object behind the constitution of the Force. That rule purports to set out the primary duties of the Force. Sub-rule (*a*) of the rule states that members of the Force may be employed in any part of the Indian Union "for the restoration and maintenance of law and order, and for any other purpose as directed by the Central Government". It is, therefore, clear that the primary or principal duty of the

Force is the maintenance of law and order. As under the Constitution, under the 1935 Act also, public order and police were both within the exclusive jurisdiction of the Provinces. The question, therefore, is whether in the face of the statutory provision embodied in rule 25, the Central Reserve Police can be said to be an armed force or whether it should be considered to be a force charged with the maintenance of public order, that is, a police force. Two decisions seem to be relevant here. In *Pooran* v. *U. P. State* (A.I.R. 1955 All. 370) the question was whether the U. P. Provincial Armed Constabulary Act, 1948, was *intra vires* the Legislature of the State. The argument was that the Provincial Act created a force of armed constabulary, that it was not covered by entry 3 of the Provincial List and that the functions and duties performed by the armed constabulary were not police functions. The High Court, after closely examining the Provincial Act and the purpose underlying the Act, held that the object of creating the force of armed constabulary was the maintenance of internal peace and order and that, therefore, it was a police force. In that connection, it stated :

"It is conceded that the word "Police" in its general sense connotes the "department of the Government or the civil force charged with duty to maintain internal peace and order." In interpreting the words used in the list given in Sch. 7, Government of India Act, 1935, it is an established principle that none of the items are to be read in a narrow or restricted sense."

Again, in *State* v. *Babulal* (A.I.R. 1957 Rajasthan 28), a Division Bench had pointed out that the Union could not legislate with respect to police matters.

7. The principal duty of the Central Reserve Police is the maintenance of law and order and, therefore, it should be treated as a police force only. Police was, under the 1935 Act as adapted, in the Provincial List and the Dominion Legislature was not competent to pass the law. Neither the explanation in the Statement of Objects and Reasons to the relevant Bill nor the fact that in the compilation of Central Acts published by the Government of India, namely, the India Code, the Act of 1949 is included under the heading "Armed Forces" can be conclusive in the matter. On the other hand, some points deserve notice here.

All the three Acts dealing with the three branches of the Armed Forces of the Union provide for setting up of courts martial for the trial of offences committed by members of the Armed Forces and the imposition of punishments including capital punishment. The Border Security Force is also an armed force of the Union. Central Act 47 of 1968 relating to the Border Security Force provides for the imposition of punishments including capital punishment by the Security Force Courts. However, Central Act LXVI of 1949 makes no provision for the constitution of courts martial and in the absence of an order by the Central Government under section 16 of that Act, offences punishable with imprisonment are triable only by ordinary magistrates. Rule 36 of the Central Reserve Police Force Rules provides that all trials in relation to offences under section 9 or 10 of the Act should be held in accordance with the procedure laid down in the Criminal Procedure Code and that persons sentenced to imprisonment should be confined in the Central Jail at Ajmer.

8. Another point to be noted is that the three Acts relating to the Armed Forces of the Union as well as the Act relating to the Border Security Force contain provisions for the modification of the Fundamental Rights in relation to the members of those Forces. But the Act relating to the Central Reserve Police contains no such provision regarding the suspension of Fundamental Rights. It is no doubt true that this is a pre-Constitution law and the question of incorporating a provision therein relating to the suspension of the Fundamental Rights would not have arisen at the time the law was passed. But if, as is contended in some quarters, the Central Reserve Police is an armed force of the Union, nothing prevented Parliament from incorporating appropriate provisions in the Act of 1949 itself providing for suspension of Fundamental Rights of the members of the Central Reserve Police. The matter seems to be concluded when we refer to the Police Forces (Restriction of Rights) Act, 1966 (Central Act 33 of 1966). The long title of the 1966 Act refers to " the members of the Forces charged with the maintenance of public order" but not to the members of the Armed Forces. The reference to the Armed Forces in the 1966 Act was also obviously unnecessary since appropriate provisions have already been made in this regard.

The expression " member of a police-force " is defined in section 2 (*a*) of the Act of 1966 to mean any person appointed or enrolled under any enactment specified in the Schedule to that Act. The Schedule to the Act lists the Tamil Nadu District Police Act, 1859 (Central Act XXIV of 1859), and the Madras City Police Act, 1888 (Tamil Nadu Act III of 1888), in addition to various other Acts relating to the police forces in the several States. The entry in the Schedule which is relevant here is entry 18. Entry 18 refers to Central Act LXVI of 1949.

9. If the contention of those who argue that the Central Reserve Police is an armed force is valid, one is at a loss to understand why Parliament has categorically and in emphatic terms described the Central Reserve Police as a " Force charged with the maintenance of public order". It must be noted here that Central Act 33 of 1966 is a law relatable to article 33 of the Constitution. That article refers to two categories of forces ; one is the Armed Forces and the other is the Forces charged with the maintenance of public order. Parliament has chosen to designate the Central Reserve Police as a police force for the purposes of article 33. If the Central Reserve Police is to be deemed to be a police force for the purposes of article 33, it cannot be treated as an armed force for the purposes of the provisions of the entries of the Legislative Lists. It follows that under the corresponding legislative entries in the 1935 Act also, the Central Reserve Police must be taken to be a police force only.

10. Those who are of the view that the Central Reserve Police is an armed force of the Union rely mainly on entry 2 of the Union List.* The constitutional validity of the Central Act of 1949 has to be tested not with reference to the legislative entries in the Constitution, but with reference to the corresponding entries in the 1935 Act as adapted in 1947.

---

* Page 36 of the *Report of the Administrative Reforms Commission on Centre-State Relationships*. pages 7–9 of the *Journal of Constitutional and Parliamentary Studies*, Vol. III, No. 4, October-December 1969 (article captioned '*Administrative Relations between the Union and the States*' by Thiru R. S. Gae, Union Law Secretary); paper on *Political and Administrative Relations* presented by the late Thiru P. Govinda Menon, the then Union Minister for Law and Social Welfare, to the National Convention on Union-State Relations held in New Delhi in April 1970.

Entry 1 of the Federal Legislative List in the 1935 Act as originally enacted, in so far as it relates to the Armed Forces may be compared with that entry as adapted in 1947—

As originally enacted.	*As adapted in* 1947.
1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment;	1. The naval, military and air forces of the Dominion and any other armed forces raised or maintained by the Dominion; and armed forces which are not forces of the Dominion but are attached to or operating with any of the armed forces of the Dominion; . . . .

It will be observed that the original entry specifically excluded from its scope military or armed police maintained by Provincial Governments but in the entry as adapted this exception is not found. Nevertheless the armed police forces of the Provinces continued in existence even after the 15th August 1947. We have already referred to the decision of the Allahabad High Court in A.I.R. 1955 All. 370 holding the Act of 1948 of the U. P. Legislature relating to the provincial armed constabulary to be a valid piece of legislation. This shows that the entry relating to police in the Provincial Legislative List was construed to include the armed police force also which necessarily implies that an armed police force is not included in entry 1 of the Federal Legislative List as adapted. For our present purpose what is relevant is that entry 1 of the Federal Legislative List as originally enacted referred to two categories of armed forces: one is, His Majesty's forces borne on the Indian establishment and the other is, an armed force raised in India by the Crown. When the entry was adapted in 1947, this dichotomy seems to have been preserved and the entry as so adapted, therefore, referred to the naval, military and air forces of the Dominion and any other armed forces raised or maintained by the Dominion. The first part of the new entry may be said to correspond to the

first part of the original entry. The second part, that is "any other armed forces raised or maintained by the Dominion" may be said to correspond to the second limb of the old entry, namely, "any other armed force raised in India by the Crown". We are, therefore, of the opinion that the entry as adapted in 1947 was not intended to take within its ambit an armed police force. The whole entry dealt with the armed forces and the expression used throughout the entry was "armed forces". The first part referred to the three branches of the armed forces of the Dominion, and the second part referred to the other armed forces raised or maintained by the Dominion. Having regard to the general object of the entry and the purposes for which that entry had been used before the 15th August 1947, the *ejusdem generis* rule would apply for the interpretation of the expression "other armed forces raised or maintained by the Dominion". So interpreted, an armed force, which is not a naval, military or air force of the Dominion, must for the purposes of the entry be a force, which in discipline, composition and functions, is similar to a regular armed force and according to this interpretation, it is difficult to sustain the argument that it will include a force which is not similar to a regular armed force. In this view also, the entry must be interpreted as excluding an armed police force.

11. Our view regarding the scope of entry 1 of the Federal Legislative List as adapted in 1947 gets reinforced, if we look into the various modifications which the corresponding entry of the Union List in the Seventh Schedule to the Constitution, namely, entry 2, underwent in the process of drafting.* It would appear from the discussions relating to this entry that only two categories of armed forces were contemplated, that is, (1) the regular armed force and (2) semi-military organizations such as the National Cadet Corps, territorial army, etc. The Act of 1949 constituting the Central Reserve Police cannot be said to fall within entry 1 of the Federal Legislative List in the 1935 Act. That entry cannot be said to deal with police as such. It would seem that the Act must be held to be *ultra vires* the Dominion Legislature.

12. The Administrative Reforms Commission and the late Thiru P. Govinda Menon have referred to the protection of the property of the Central Government and the use of the Central

* For a summary of these discussions, *see* Appendix IX.

Reserve Police for that purpose. The Administrative Reforms Commission states that the Central Reserve Police may be used for the protection of Central staff or of Central works against sabotage. The late Thiru Menon refers to the situation arising out of strike, etc. He states* that when a State Government is not willing or is not in a position to help the Central authorities in running their offices and departments or to protect the property of the Central Government, the Centre could use the Central Reserve Police. According to article 298 of the Constitution, the executive power of the Union extends to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. But the said executive power of the Union, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, will be subject in each State to legislation by the State. Protection of property including that of the Central Government is a function falling within the field of public order, the most important function of the State Government. We have set out our views on the constitutional validity of the Act of 1949.

13. We have next to examine the expediency or the desirability of deploying the Central Reserve Police units in the States without their consent on the assumption that the Act of 1949 is a valid piece of legislation, though as indicated earlier we have our doubts in the matter. Both the Administrative Reforms Commission and the Union Law Secretary † have relied on article 355 of the Constitution for the view that the Centre is entitled to station and operate units of the Central Reserve Police in the States without consulting them or even contrary to their express wishes. Thiru Morarji Desai has, in the course of his speech at the Indian Parliamentary Association Symposium held in New Delhi in May 1970, also referred to article 355 and stated that emergency powers arise out of that article.

14. There was no provision corresponding to article 355 in the Government of India Act, 1935. The Draft Constitution prepared by the Drafting Committee in February 1948 also did not include

* Paragraph 16 of the paper entitled *Political and Administrative Relations* presented to the National Convention on Union-State Relations held in April 1970.

† Page 8 of Volume III, No. 4 of the *Journal of Constitutional and Parliamentary Studies*.

a provision similar to the article. When commenting on the Draft Constitution published in February 1948, it was represented on behalf of the Indian States that a specific provision should be included in the Draft Constitution imposing a duty on the Union to protect every component State against external aggression or domestic violence. This suggestion was apparently based on the apprehension of the persons then in charge of the Governments of the Indian States that pressure may be brought to bear on them by democratic forces operating outside the Indian States, that is in the then Provinces, to introduce democratic representative government in the Indian States and presumably the suggestion was made to guard against any such pressure so that the Centre could be prevailed upon to deal with the pressure if and when it manifested itself. In the Memorandum, it was suggested that the Union should protect the State against external aggression and upon a request from the executive government of a State, protect it against domestic violence or insurrection. The corresponding provisions in the American, Swiss and Australian Constitutions were cited as precedents. The Drafting Committee agreed with this suggestion. But the article proposed by it omitted the reference to request being made by a unit for protection against domestic violence. In other words, the Union was empowered to extend its protection against domestic violence whether or not the State wanted it. The new article which now figures as article 355 was introduced in the Constituent Assembly on the 3rd August 1949. It was ultimately adopted by the Assembly.

15. Section 4 of Article IV of the American Constitution casts an obligation on the Union to protect each State against invasion and on application of the Legislature or of the executive (when the Legislature cannot be convened) against domestic violence. Article 15 of the Swiss Constitution provides that if a Canton is threatened by a sudden danger from a foreign country, the Government of the Canton threatened should seek the aid of other Confederate Cantons and at the same time inform the federal authorities. Article 16 deals with internal disturbance. It states that in cases of internal disturbance or if danger is threatened from another Canton, the Government of the Canton threatened should give immediate notice to the Federal Council so that the latter may take the necessary measures or summon the Federal Assembly. Section 119

of the Australian Constitution requires the Commonwealth to protect every State against invasion and, on the application of the executive Government of the State, against domestic violence. It will be observed that in all federal Constitutions, protection against domestic violence is afforded to the States by the Federal Government only on a request being received from the State. Of course, protection against invasion or external aggression has to be afforded to the State by the Federal Government without any request being made in that regard by the State. In fact, the representatives of the Indian States who originated the idea made it clear in the draft suggested by them that the Union should intervene in the event of domestic violence or insurrection within a State only upon a request from the executive Government of the State. It was only the Drafting Committee which modified the provision omitting reference to any request by the State in the case of internal disturbance.

16. Article 355, it will be noticed, refers to internal disturbance. Article 352 also refers to internal disturbance. In dealing with article 352, we had invited attention to the definition of "internal disturbance" furnished by the Joint Parliamentary Committee. That Committee stated that "internal disturbance" should be so defined that it would ensure that for purposes of proclaiming a National Emergency, the internal disturbance must be comparable in gravity to the repelling of external aggression. We think the same definition should apply for the interpretation of the expression "internal disturbance" occurring in article 355 also. Another point which deserves notice in this connection is that whereas under article 352, it is left to the subjective satisfaction of the President to determine what is internal disturbance, article 355 does not refer to the satisfaction of any authority. All that it states is that the Union is bound to protect a State against internal disturbance. Each and every incident in a State which may not be to the liking of the political party for the time being in power at the Centre cannot be classified as an internal disturbance. Strike by the Central Government employees in a State can hardly be said to constitute internal disturbance in the sense in which that term has been used in the Constitution, particularly having regard to what the Joint Parliamentary Committee had stated earlier. While we suggest no change in relation to the duty of the Union to protect

the State against external aggression, we would suggest that the Union should not take upon itself the burden of protecting a State against internal disturbance, unless the State finds itself helpless to maintain law and order or to protect life and liberty, that is, the Union should not intervene in the internal affairs of the State, unless the situation assumes such proportions as may be said to be comparable to a situation arising out of external aggression. We, therefore, recommend that article 355 may be so amended as to make it clear that the Union would not intervene in case of "internal disturbance" in a State except on receipt of a request from the State Government concerned. This will bring the provision into line with the provisions in other federal Constitutions on which article 355 is based and give effect to the original intention of the sponsors of the provision. If a State is so callous as to let loose lawlessness and anarchy within its borders, it is not as though the Union is helpless. It is always open to the Union to invoke article 356 and take over the administration of the State under its direct control subject to the safeguard suggested by us in relation to article 356.

The use of the regular army or the armed forces of the Union in aid of civil power is governed by the provisions of the Criminal Procedure Code. It is not necessary for the Committee to deal with this aspect of the matter while considering article 355.

The State police should be relied on for maintenance of peace within the State. The interference of the Union in the upkeep of law and order in a State seems to be contrary to the provisions of the Constitution. Even article 355 in the sense in which it has in our opinion to be interpreted cannot enable the Union to station the Central Reserve Police for the day to day policing of the areas of a State, a function allotted in its entirety to the State by the Constitution. We are of the view that the Central Reserve Police should not be sent to any State except at the request or with the consent of the State.

CHAPTER XVI.

MACHINERY FOR CONDUCTING ELECTIONS TO THE STATE LEGISLATURES.

Our Constitution lays down that there should be one general electoral roll for each territorial constituency for election to Parliament or to a State Legislature and that there should be no special electorate based on religion, race, caste or sex (article 325). The Constitution also provides for adult suffrage (article 326). It has prescribed the qualifications and disqualifications of candidates. Separate provision has been made by an Act of Parliament for delimitation of constituencies. Such delimitation was made in 1951. We recommend that the delimitation of constituencies made in 1951 should continue.

2. The two Representation of the People Acts and the rules made thereunder deal with minute details relating to elections. So far as the elections to the State Legislature are concerned, it is anomalous that Parliament should deal with matters relating to State elections. It is possible to secure more powers for the States in relation to elections without an amendment of the Constitution. All that is needed is an amendment of the two Representation of the People Acts, transferring the powers now conferred by those Acts on the Central Government and the authorities of the Central Government to the State Government and their officers. But the supervision of the Election Commission may remain.

What is required is, as already suggested by us, an amendment of the relevant Acts of Parliament for giving greater freedom to the States in relation to the elections, and other allied matters. In our opinion, the best solution will be to restrict the scope of the two Central Acts and consequently the rules made thereunder to elections to Parliament. It may be left to the Legislatures of the States to enact separate laws regarding elections to the State Legislatures. Articles 327 and 328 empower the State Legislature to deal with the matters in so far as they relate to them. Although entry 72 of the Union List confers exclusive power on Parliament to make laws in relation to elections to the State

Legislatures also, entry 37 of the State List confers exclusive power on the State Legislature to enact laws regarding elections to the State Legislature subject to the provisions of any law made by Parliament. Therefore, the object in view can be achieved by suitably altering the existing Acts for this purpose without amending the Constitution.

CHAPTER XVII.

INTER-STATE WATER DISPUTES.

Article 262 deals with the adjudication of disputes relating to waters of inter-State rivers and river valleys. This article is entirely different from the corresponding provisions in the Government of India Act, 1935, namely, sections 130 to 133. Under section 131, it was the Governor-General who had to decide inter-State water disputes between the federating units. This decision was to be rendered after investigation by an expert Commission. The Governor-General had to exercise his discretion in the discharge of his functions under section 131. In the Draft Constitution, the provisions of sections 130 to 133 were reproduced. There was also a provision in the Draft Constitution for obtaining the opinion of the Supreme Court on any question of law arising out of the report of the expert body. But subsequently, the present article 262 was substituted for the provision originally proposed. Even at the time of the enactment of the 1935 Act, the then Madras Government had intimated to the Reforms Office of the Government of India that it was desirable to give the Federal Court exclusive jurisdiction to decide inter-unit water disputes. They added that such jurisdiction should be widened to cover cases of agreement entered into even before the commencement of the Constitution Act so as to include arrangements such as the 1892 Agreement between this State and Mysore "whose interpretation ..... is a constant source of dispute". This was reiterated subsequently in 1934. The Secretary of State suggested that the dispute should be settled by the Governor-General acting in his discretion with the help of a special expert tribunal. This Government dealt with this point in great detail in their Letter, dated the 17th March 1934, in which it was pointed out that it would be unusual in a Federation and opposed to the very idea of a federal State that inter-unit disputes or disputes between the federal State and any of its units should be referable for decision to an authority outside the Federation itself. This Government said that the Federal Court should be the adjudicating Tribunal in all disputes arising out of rights in water.

2. The Study Team of the Administrative Reforms Commission for dealing with Centre-State Relationships, has dealt with this topic. The Study Team has catalogued the reasons as to why the Federal Court should not be made the authority competent to decide inter-State water disputes. The Team had before it the views of the then Madras Government communicated to the Reforms Office in connection with the enactment of the Government of India Act, 1935. The Study Team gave the following reasons for not empowering the Federal Court in this matter :—

(1) lack of any codified or settled law,

(2) prior to 1935, river waters were apportioned not according to legal right, but according to expediency,

(3) merger of erstwhile princely States and reorganisation of States had resulted in certain decisions regarding sharing of waters and these decisions may have to be re-opened,

(4) sharing and distribution of waters should be based not so much on rights as on expediency.

The then Madras Government in 1934 favoured the Federal Court and has dealt with the objections against this suggestion. It pointed out that the objection that the decisions of the Federal Court would be largely dominated by common law doctrines, could be eliminated if the Constitution itself specifically provided that such disputes should be decided on the principle of apportioning supplies in the most equitable and economical manner.

As regards the second objection referred to by the Study Team, namely, the arrangements in force before 1935 being upset, the then Madras Government specifically stated that the agreements and treaties entered into before 1935 should be respected, although the question relating to their interpretation or their modification should be decided with reference to the principle of apportionment of water in the most equitable and economical manner.

3. The Study Team of the Administrative Reforms Commission has, after consideration of the whole issue, favoured the continuance of the existing arrangements under which inter-State water disputes have to be dealt with under the Inter-State Water Disputes Act, 1956 (Central Act 33 of 1956). According to that Act, whenever a State Government request the Central Government

to refer any dispute relating to sharing of water with another State, the Central Government has to constitute a Tribunal, if in the opinion of the Central Government, it could not be resolved by negotiations. Thiru Gae, in his article mentioned above, has detailed the procedure to be followed in this regard. Article 262 read with section 11 of the Act of 1956, ousts the jurisdiction of the Supreme Court and all other Courts in relation to inter-State water disputes. The position, therefore, is that no State can take the matter to any court, although article 131 confers exclusive original jurisdiction on the Supreme Court in relation to other inter-State disputes.

4. Another point which arises in this context is as to how the decision of the Tribunal given under the Act is to be implemented. Section 6 of the Act states that the decision of the Tribunal is final and binding on the parties to the dispute and that it shall be given effect to by them. The question still is: how is the decision to be enforced ? It may be pointed out here that section 17 of the Arbitration Act, 1940 (Central Act X of 1940), empowers the Court concerned to pronounce judgment according to the award of the arbitrator and upon the judgment so pronounced, a decree follows. In the absence of a similar provision in the Central Act of 1956, it is extremely doubtful whether the decision of the Tribunal could be effectively implemented against a recalcitrant State. Thiru Gae, in his article, has tried to argue that article 131 could be invoked subsequent to the decision of the Tribunal. He states that the substantive rights between the parties having been adjudicated upon by the Tribunal, the State acquires a legal right on the strength of the decision of the Tribunal, to have it implemented. The argument of the Union Law Secretary does not seem to be sound in view of the Constitutional provisions and section 11 of the Act. Section 11 is specific and categorical. It states that the Supreme Court or any other Court cannot exercise any jurisdiction in respect of any inter-State water dispute. This section read with article 262 must be construed to include the jurisdiction conferred by article 131 also. Thiru Gae, aware of this position, concludes by saying that the purpose may well be achieved by duly amending section 6 of the Act " making provisions for settlement of the disputes relating to implementation of the decision of the Tribunal."

5. The question is whether the present arrangements are capable of safeguarding the rights of the States concerned. As pointed out by the then Madras Government in 1934, in all other Federations, it is the Federal Court which has been entrusted with the function of deciding inter-State water disputes. Under the 1935 Act, it was the Governor-General who had to decide these disputes in his discretion with the help of an expert investigating body. *Ad hoc* tribunals lack the power to enforce their decisions and in the absence of a co-ordinating judicial authority, it may be difficult to evolve common principles applicable to these disputes. This Committee, therefore, recommends that all disputes relating to inter-State rivers should be decided by the Supreme Court and satisfactory provisions should be made for implementing its decisions.

CHAPTER XVIII.

SEA-BED UNDER TERRITORIAL WATERS.

Under section 172 (1) (*a*) of the Government of India Act, 1935, all lands situate in a Province vested in the Crown for the purposes of the government of the Province. The territory of a State consists not only of the land within its boundaries, but it includes national waters and in the case of maritime States, territorial waters also. Waters in lakes, rivers and canals are deemed to be national waters. Territorial waters are waters contained in the maritime zone or belt surrounding a State. The sea-bed belongs to the littoral State absolutely in the same manner as its lands. It has the fullest dominion over it. It alone is entitled to the minerals therein and it is entitled to construct tunnels thereunder. Article 1 (2) of the Constitution enacts that the States and the territories thereof shall be as specified in the First Schedule to the Constitution. That Schedule does not exclude the sea-bed under territorial waters from the territories of the States. Article 297, however, vests in the Union all lands, minerals and other things of value underlying the ocean within the territorial waters of the country. Had article 297 not been included in the Constitution, the bed of the sea and the sub-soil beneath the territorial waters would have been under the ownership of the States, with the right to exploit both the surface and the sub-soil.

2. No provision similar to article 297 was included in the Draft Constitution prepared by the Constitutional Adviser in October 1947. Nor even did the Draft Constitution prepared by the Drafting Committee in February 1948, contain any corresponding provision. The idea seems to have originated with Thiru R. R. Diwakar and Thiru S. V. Krishnamoorthy Rao, who suggested the insertion of an entry in the Union List, relating to the ownership of and dominion over lands, minerals and other things of value underlying the ocean sea-ward of the ordinary low water mark on the coast extending to three nautical miles. It was pointed out with reference to this suggestion that if the intention was that the ownership of and dominion over lands, minerals and other things of value underlying the ocean within territorial waters should vest

in the Union and not in the maritime States, a specific provision should be made in the Constitution to that effect. The Drafting Committee decided to insert the requisite provision in the Draft Constitution.

Introducing the new provision, numbered as draft article 271-A, on the 15th June 1949, Dr. Ambedkar told the Constituent Assembly—

" We are going to have integrated into the territory of India several States which are for the time being maritime States and it may be quite possible for such States to raise the issue that anything underlying the ocean within the territorial waters of such States will vest in them. In order to negative any such contention being raised hereafter it is necessary to incorporate this article."*

Thiru A. Thanu Pillai pointed out that although a certain amount of control in respect of territorial waters should vest in the Union, all property and things within the territorial waters should not vest in the Union. He pleaded that the maritime States should not be divested of the right to minerals, etc., in territorial waters.†

Dr. Ambedkar, in his reply to the discussion, again dealt with the object of the new provision. He said :

" Ordinarily it is always understood that the territorial limits of a State are not confined to the actual physical territory but extend beyond that for three miles in the sea. That is a general proposition which has been accepted by international law. Now the fear is—I do not want to hide this fact—that if certain maritime States such as, for instance, Cochin, Travancore or Cutch came into the Indian Union, unless there was a specific provision in the Constitution such as the one we are trying to introduce, it would be still open to them to say : ' Our accession gives jurisdiction to the Central Government over the physical territory of the original States ; but our territory which includes territorial waters is free from the jurisdiction of the Central Government and we will still continue to exercise our jurisdiction not only on the physical territory, but also on the territorial waters, which according to the International Law and according to our original status before

* Page 887, CAD VIII.
† Page 888, *ibid.*

accession belong to us.' We therefore want to state expressly in the Constitution that when any maritime States join the Indian Union, the territorial waters of that Maritime State will go to the Central Government. That kind of question shall never be subject to any kind of dispute or adjudication. That is the reason why we want to make this provision in article 271-A."*

3. It will be seen from the speeches of Dr. Ambedkar that under international law, the territorial waters and the land underneath them vest in the adjoining States and not in the Federal Government and that the only object of the article was to extinguish the right of Indian States to the sea-bed under territorial waters. Again, according to Dr. Ambedkar, the intention behind article 297 was that the territorial waters themselves and not merely the sea-bed below those waters should go to the Union Government. But the Madras High Court in *A.M.S.S.V.M. & Co.* v. *State of Madras* (I.L.R. 1953 Madras 1175 at page 1192) has, while interpreting article 297, categorically stated:

"Under this provision, what vests in the Union is the bed of the sea beneath the territorial waters and not the waters themselves and in law the two do not stand in the same position."

Under the Constitution, "Fisheries" is an item included in the State List. "Fishing and fisheries beyond territorial waters" is in the Union List. The Madras High Court in the decision referred to above has pointed out that under entry 21 of the State List, the State Legislature is competent to enact laws in respect of fisheries in territorial waters.

4. Article 297 refers to the continental shelf also. But for article 297, the sea-bed under the territorial waters and minerals therein would vest in the maritime States. This is the present position prevalent in the U.S.A. We have suggested in another Chapter that the legislative entries relating to oilfields, mineral oil resources, petroleum, mines and minerals, in the Union List should be transferred to the State List. Consistent with this suggestion, we recommend that article 297 may be altered so as to restrict it to the continental shelf of the country. In that event,

* Page 892, CAD VIII.

the sea-bed and minerals therein under the territorial waters will vest in the States. It may be pointed out here that in the U.S.A., an Act of 1953 empowers the Federal Government to explore and develop natural resources in the sea-bed underlying the continental shelf. Our suggestion, if implemented, will bring article 297 into accord with the position as it now obtains in the U.S.A. It may be mentioned that Dr. Ambedkar's reason no longer holds good as there are no Part B States now.

CHAPTER XIX.

UNION EXECUTIVE.

The Central Cabinet is the chief executive body at the nationa level. The Committee considers that the Union Cabinet should be an instrument securing the integrity of the country and national unity.

2. In a country with vast differences of religion, language, race and culture, steps must, as far as possible and consistent with Parliamentary traditions, be taken to secure representation in the Union Ministry for the various regions and linguistic groups. Even with the Presidential system of government in vogue in the U.S.A., where a Cabinet of the Parliamentary type has no place and the Cabinet cannot exercise any real power, the members of the Cabinet are often named so as to give representation to various geographical regions. The American Constitution does not refer to any Ministry to advise the President. The American Cabinet is appointed purely on an informal basis and is a political institution. But efforts are made to secure for it as wide a territorial base as possible.

3. The most notable characteristic of the Canadian Cabinet is the representative nature of its membership. It seeks to co-ordinate the divergent Provincial, sectional, religious, racial and other interests throughout the Dominion. The first requisite is that every Province must have, if at all possible, at least one representative in the Cabinet. The Cabinet has thus become federalised. The convention that each Province must be represented in the Cabinet has led to another convention, namely, that Quebec and Ontario, the two large Provinces, must each have more than one representative. It is further ensured that at least three French speaking representatives are in the Cabinet. Race and religion are also carefully considered in making Cabinet appointments. The three French Canadians from Quebec are always Roman Catholic and one English Canadian is usually a Protestant. The Cabinet invariably contains an Irish Roman Catholic. This practice of forming a Cabinet based on several varieties of sectional

representation is justified on the ground of the racial, religious and cultural differences prevalent in such a large and varied country as Canada.

4. The three major political parties in Australia, namely, the Labour, Country and Liberal Parties have their main base in the various States and the organisations of the parties reflect the federal character of the Constitution. The Cabinet must include representatives of the rural areas and urban areas and it must, if possible, take in representatives of each State. The Loan Council is a peculiar feature of the Australian constitutional set up. It is a body which came into existence by virtue of an agreement entered into between the Federal Government and the various States. This agreement has been given a statutory status by a Constitutional Amendment and by the passing of Acts by the Commonwealth Parliament and the Parliaments of the States. The Loan Council is said to discharge in Australia the same functions that the Senate in America discharges. The Australian Loan Council is said to serve the interests of the States. It consists of the Australian Prime Minister and the Prime Ministers of the various States or their deputies.

5. The National Executive in Switzerland is known as the Federal Council. It consists of seven members elected for a term of four years by the Federal Assembly (i.e. Parliament). This type of Executive is known as the collegiate one. It is based neither on the Presidential system nor on the Parliamentary system. In Switzerland, in the election of the Federal Council, two unwritten conventions are scrupulously observed. One is that the two leading Cantons, namely, Berne and Zurich are always represented in the Cabinet. Vaud is, by area and population, the largest of the purely French speaking Cantons and this is invariably represented in the Cabinet. Another convention is that not more than five members of the Cabinet should be chosen from the German speaking Cantons. Thus, either another of the French speaking Cantons or the Italian speaking Canton or both are always represented. It is also the custom that both the confessions, namely, Roman Catholics and Protestants and important language groups should be more or less fairly represented. It is further ensured

that all the four political parties in the country, namely, Liberals, Catholic Conservatives, Farmers' Party and Socialists, are represented in the Cabinet.

6. Ever since the promulgation of our Constitution on the 26th January 1950, ten Councils of Ministers have been in office at the Centre. Precise information regarding the States in which Ministers of Cabinet rank had their domicile or from which they were elected is not available. With reference to the available data, this Committee has tried to ascertain the State or States to which the Central Ministers of Cabinet rank belonged or belong. On a rough analysis, it appears that Bihar, Gujarat, Maharashtra, Punjab and Uttar Pradesh had always been represented on the Central Cabinet. Uttar Pradesh had six Cabinet Ministers out of 20 during the period from the 13th May 1952 to the 17th April 1957. Again, during the period from the 10th April 1962 to the 27th May 1964, when the total number of Cabinet Ministers was 24, U.P. had 6. Tamil Nadu, except in the present Cabinet, and West Bengal, except during the period from May 1950 to May 1952, had always been represented by Ministers of Cabinet rank, although the number of such Ministers varied from time to time. Andhra Pradesh, Kerala and Mysore had been represented by Cabinet Ministers except* on three or four occasions. On the other hand, Assam, Madhya Pradesh, Orissa, Rajasthan and Jammu and Kashmir had representation in the Cabinet only on one or two occasions.† This shows that there had been no uniform practice or convention in the appointment of Cabinet Ministers. Whereas some States have been represented on almost all occasions, some others have gone without representation for over a long period. In the light of the practice prevailing in other countries with a Constitution

---

* *Not represented.*

Andhra Pradesh	..	26-1-50 to 6-5-50; 6-5-50 to 13-5-52; 17-4-57 to 10-4-62.
Kerala	..	27-5-54 to 9-6-64; 9-6-64 to 11-1-66; 11-1-66 to 24-1-66; 24-1-66 to 13-3-67; 23-5-70 to date.
Mysore	..	26-1-50 to 6-5-50; 6-5-50 to 13-5-52; 11-1-66 to 24-1-66; 24-1-66 to 13-3-67.

† *Represented.*

Assam	..	24-1-66 to 13-3-67; 13-3-67 to date.
Madhya Pradesh	..	6-5-50 to 13-5-52; 13-5-52 to 17-4-57.
Orissa	..	6-5-50 to 13-5-52.
Rajasthan	..	10-4-62 to 27-5-64.
Jammu and Kashmir.		13-3-67 to date.

similar to our own, it is not beyond the capacity of our leaders and statesmen to establish conventions regulating the formation of the Cabinet at the Central level in such a way as to secure, consistent with the Parliamentary type of government and all that it involves, representation for the various regions of the country. We had already adverted to the fact that there have been occasions when a single State had secured the largest number of Cabinet Ministers. In order to guard against such practices in future, it is desirable to ensure that the number of Central Ministers of Cabinet rank belonging to any one single State should not be more than one-fifth of the total number.

CHAPTER XX.

AMENDMENT OF THE CONSTITUTION.

In every written Constitution, a provision is always inserted providing for its amendment. This is particularly so in a Federal Constitution such as ours. We may examine the provisions relating to amendment found in other Federal Constitutions of the traditional type:

United States of America—

Article V.—The following four methods are specified :—

1. Proposal by Congress by a two-thirds vote in each House and ratification by Legislatures of three-fourths of the States.

2. Proposal by Congress by a two-thirds vote in each House and ratification by conventions called in three-fourths of the States.

3. Proposal by two-thirds of the State Legislatures and ratification by three-fourths of the State Legislatures.

4. Proposal by two-thirds of the State Legislatures and ratification by conventions called in three-fourths of the States.

Switzerland—

Articles 118 *to* 123—

1. By a majority vote of each House of the Federal Legislature, and ratification by a popular referendum, requiring a majority of the total vote and a majority in a majority of the Cantons.

2. Proposal by initiative petition signed by 50,000 electors. If this proposal is in the form of a specific amendment, it must be submitted by the Federal authority as it stands, if it takes the form of a demand that the National Assembly prepare an amendment embodying a general principle set forth in the petition, the

Assembly must first submit to popular vote the question whether such an amendment should be prepared, and if this is approved, then prepare an amendment and submit it to popular vote, subject in each case to the same requirement as to majorities.

Provision is also made for a complete revision of the Constitution, initiated by a vote of both Houses or by one House alone, or by a petition of 50,000 electors. If demanded in any of these three ways, the proposal is submitted to popular vote. If approved, the Legislature is elected afresh to draw up the new Constitution, and this revised Constitution is then submitted to popular vote.

Australia—

Section 128.—The process of amendment consists of three stages.

The proposed law must be passed by an absolute majority of both Houses. It must be submitted to the electors, not less than two nor more than six months, after its passage through both Houses. If it is approved by a majority of the electors in a majority of the States, and by a majority of all the electors voting in the Commonwealth, it may be presented to the Governor-General for his assent.

There are two exceptions to the rules stated above :

(1) the Governor-General may submit a proposed law to the electors though it has passed only one House, if that House has passed it twice and the other House has twice rejected it, an interval of at least three months having elapsed between the occasions on which the first mentioned House has passed it;

(2) the second exception is that no alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives (Lower House of Parliament) or increasing, diminishing or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto can be made without the approval of the majority of the electors voting in that State.

2. The British North America Act, 1867, as *originally enacted* contained no provision for its amendment by the Dominion Parliament. The British Parliament amended the Act only in 1949 empowering the Dominion Parliament to amend that Act except as regards certain specified matters. Even as late as 1951, the British Parliament had to alter the British North America Act enabling the Dominion Parliament to enact laws in regard to old age pensions. The Dominion Parliament is not competent to deal with any of the subjects assigned by the Constitution Act exclusively to the Legislatures of the Provinces. The Provincial Legislatures are competent to amend their own Constitutions, except as regards the office of Lieutenant-Governor.

3. It will be seen from the American, Swiss and Australian Constitutions that any amendment of the Constitution, whatever its nature, requires ratification by a specified proportion of the units of the Federation through the Unit Legislatures, Conventions or referendum. Thus, in other federations, a plan of double action is provided for, action by the General or National Legislature and in addition action by the legislatures or the electors of a majority of the units. This applies to each and every amendment of the Constitution whatever the provision sought to be altered.

4. Our Constitution provides for three different methods by which it could be amended (1) by a simple majority in both Houses of Parliament, example, articles 4, 169, 239-A ; (2) amendment by a special majority in each House of Parliament, that is, a majority of the total membership of the House concerned and a majority of not less than two-thirds of the members of the House present and voting : the first paragraph of article 368 provides for this in relation to matters other than those dealt with in the proviso to that article ; (3) amendment by a special majority in each House of Parliament in the manner described in item (2) above and, in addition, ratification by the Legislatures of at least one-half of the States. This applies to the matters enumerated in the proviso to article 368. Amendments which require ratification by the States relate to election of the President, extent of the executive power of the Union and of the States, High Courts for Union territories, the Union Judiciary, the State High Courts,

Legislative Relations between the Union and the States, distribution of legislative powers, representation of States in Parliament and article 368 itself.

5. In a federal set up, it is necessary to ensure that the units are always associated in full measure with any amendment of the Constitution. The list given in the proviso to article 368 cannot be said to be exhaustive of the provisions in which the States have a vital interest. To give some examples, whereas the provisions relating to Legislative Relations between the Union and the States (Chapter I of Part XI) could not be amended except with the support of at least one-half of the States, the provisions relating to Administrative Relations between the two layers of authorities (Chapter II of the same Part) could be altered by Parliament without the consent of the States. Again, articles 268 to 279 contain provisions relating to the distribution of revenues between the Union and the States. It is open to the Union to modify these provisions subject to a special majority in each House of Parliament and even consultation with the States is not necessary. Similarly, the provisions relating to the official language in Part XVII, are also subject to alteration under the main paragraph of article 368 and the States have no voice in the matter.

6. Right from the commencement of Constitution-making, the role to be assigned to the States in altering it, was considered by persons entrusted with the task of drafting the Constitution.* What we are here concerned with is the extent to which the States should be associated in the amending process. Under the proviso to article 368, ratification by only one-half of the States is required and that too only for the amendments relating to the provisions mentioned in that proviso.

7. The number of States is now 18 and one-half of that number is 9. The possibility of a Constitutional amendment being effected with the support of States whose number is equal to the number of States who oppose it cannot be completely ruled out. Thus, an amendment can become law with the support of just 9 States, although the other 9 may oppose it, and the amendment may be to the detriment of the opposing States. This contingency,

* For a summary of the discussions, see Appendix X.

however remote, cannot be disregarded. One-half of the number of States at any given time need not necessarily be the same thing as the majority of the States. When the number of States is an odd one, a Constitutional amendment can be carried through with the support of a bare majority of one. With the federalising process in operation, it is always safer and desirable to associate a substantial number of States in the amending process, without making it either too rigid or too flexible. In the U.S.A., the ratification has to be by three-fourths of the States and in Switzerland and Australia any amendment of the Constitution, in addition to ratification by a majority of the units, has to be ratified by a popular referendum by a majority vote. In his *Memorandum, dated the 30th May 1947, the Constitutional Adviser* made a proposal requiring ratification by not less than two-thirds of the units. An identical suggestion was made by Sir N. Gopalaswami Ayyangar and Sir Alladi Krishnaswami Iyer. We, therefore, recommend that it may be laid down that the ratification should be by three-fourths or at least two-thirds of the States.

8. The process of territorial alteration cannot be said to be complete still. Meghalaya, a sub-State of Assam, is to become a full fledged State. Other Union territories like Tripura and Manipur are agitating for Statehood. The question of Telengana also is there. The number of States is thus liable to fluctuation. Even among the existing States, there are differences in population, resources, etc. The smaller States, particularly sub-States like Meghalaya and Union territories, can stand no comparison with the older and well established States either in size or economic development or resources. With the increase in the number of States constituting the Union, it would be possible to amend the entrenched provisions, that is, the provisions specified in the proviso to article 368 with the support of sparsely populated States, in the face of opposition by the most populous States, namely, Uttar Pradesh, Maharashtra, West Bengal, Bihar, Andhra Pradesh, Tamil Nadu, Gujarat, Mysore and Rajasthan, which have more than three-fourths of the population of the country.* This

* Article by Thiru K. Santhanam captioned *Threats to Stability of Indian Federation, The Hindu*, dated the 13th November 1970.

c.f. also speech of Dr. K. Subba Rao, on the 27th November 1970, at Madras under the auspices of the Madras Regional Branch of the Indian Institute of Public Administration.

practically sets at naught the whole object behind the proviso to article 368. Hence, in addition to the requirement that the ratification should be by three-fourths or at least two-thirds of the States, it may be further stipulated that the States whose Legislatures ratify the amendment should represent three-fourths or at least two-thirds of the population of all States. Population for this purpose may be defined to mean the population as ascertained at the last preceding census of which the relevant figures have been published. It will be observed that according to our proposal, the ratification will be by three-fourths or at least two-thirds of the population of all States through their Legislatures and not by a simple majority of such population. The reason for this is that a bare majority of the total population of the States will mean only the population comprised in the densely populated States such as Uttar Pradesh, West Bengal, Tamil Nadu, etc., and the amendment could be carried with the support of these populous States in the face of opposition by the less populous States. Our recommendation, if implemented, will increase the sense of participation of the States in the process relating to the alteration of the Constitution, besides ensuring stability and acting as a check against hasty amendments of the Constitution.

9. We see no reason to restrict the process of ratification to the provisions specified in the proviso to article 368. We have indicated earlier in this Chapter that the States are vitally interested in several other provisions of the Constitution. On the analogy of the provisions in other Federal Constitutions and consistent with the federal concept, which forms the basis of our Constitution, we recommend that any amendment of the Constitution, whatever its nature, should need ratification by three-fourths or at least two-thirds of the States. It may not be out of place to mention here that the Constitution could be amended in several respects by a simple majority in Parliament without even consulting the States by virtue of the constituent power conferred on Parliament by various other articles of the Constitution. We have already given some examples of these provisions. Our suggestion is confined to an amendment falling strictly within the scope of article 368. Article 368 may be so amended as to require ratification by three-fourths or at least two-thirds of the

States for any amendment of the Constitution and not only for an amendment of the nature specified in the existing proviso to the article. It will be observed that according to the original proposal of the Union Constitution Committee set out in its principal Report, dated the 4th July 1947, ratification by the units was necessary for every amendment of the Constitution. Our recommendation on this point will, if implemented, bring the provision into accord with the initial suggestion of the Union Constitution Committee.

10. The necessity for associating the States in each and every amendment of the Constitution will be apparent, if we examine the amendments already effected to the Constitution under that article. So far 23 Acts have been passed under article 368 altering the Constitution. Of these, only eleven—the Second (1952), Third (1954), Sixth (1956), Seventh (1956), Eighth (1959), Thirteenth (1962), Fourteenth (1962), Fifteenth (1963), Sixteenth (1963), Twenty-second (1969) and Twenty-third (1969)—Amendments have been ratified by the States. The interest that the States have in the provisions of the other twelve Amendments which have been placed on the statute book under article 368 without ratification by the States, will be apparent, if we examine those provisions.

First (1951), *Fourth* (1955) *and Seventeenth* (1964) *Amendments.*—They have substantially modified, among others, the provisions relating to the Fundamental Rights of the citizens dealing with discrimination, freedom of speech and expression and property (articles 15, 19 and 31). In the light of the pronouncement of the Supreme Court in *Golak Nath case* the importance of the Fundamental Rights would be quite obvious and the participation of the States in any amendment of the Fundamental Rights would reflect the federal character of the Constitution.

Fifth (1955) *and Eighteenth* (1966) *Amendments.*—These two amendments affect the territorial integrity of the States. The Fifth Amendment substituted a new proviso for the existing proviso to article 3 of the Constitution. In our Chapter relating to the territory of the State, we had occasion to refer to article 3. As pointed out there, the proviso, as it stood before its amendment in 1955, required the Central Government to ascertain the views

of the States concerned before introducing the Bill in Parliament. It has now been altered so as to provide that all that the Central Government need do is to refer the Bill to the States, specify a time for the expression of the views by the States and on such expiry proceed with the Bill, whether or not the States have expressed their views and irrespective of what those views are. This underlines the need for the active participation of the States in any amendment of the provisions relating to the alteration of the boundaries, names, etc., of the States.

Although the Eighteenth Amendment is a formal one applicable to Union territories, we feel that any amendment of a provision in the Constitution relating to the territory or area of States should require ratification by them.

Ninth Amendment, 1960.—This relates to the transfer of certain territories to Pakistan. This is a glaring instance of territories included within certain States being transferred to a foreign country and an amendment of this nature should in our opinion be undertaken only with the consent of the States affected.

Tenth (1961) *and Twelfth* (1962) *Amendments*.—These relate to the constitution of Dadra and Nagar Haveli and Goa, Daman and Diu as Union territories. Even here, we consider that the participation of the States in the amending procedure will strengthen the bonds of unity.

Eleventh Amendment, 1961.—This relates to the election of the President and the Vice-President. Considering the fact that elected members of the State Assemblies also are members of the electoral college, which elects the President, and the fact that the Vice-President is the Chairman of the Council of States, which is composed of representatives indirectly elected by the States, any amendment relating to the relevant provisions should be effected with the co-operation of the States.

Nineteenth Amendment, 1966.—This has amended article 324 (1) excluding from the purview of the Election Commission the appointment of Election Tribunals for the decision of doubts and disputes arising out of, or in connection with, elections to Parliament and the State Legislatures. In dealing with the machinery for

conduct of elections, we had already adverted to this matter. The States, as autonomous units, are as much interested in ensuring fair and free elections, as the Union. Any amendment relating to elections should, therefore, be undertaken with the consent of the States.

Twentieth Amendment, 1966.—Although this amendment is a formal one validating certain past appointments of District Judges, it has to be pointed out that the provisions relating to the subordinate judiciary, that is, posts of District Judges and other inferior judicial posts are the sole concern of the States. Any amendment relating to these matters should be undertaken only with the consent of the States.

Twenty-first Amendment, 1967.—This is a case which indicates the ease with which the provisions of the Constitution relating to language could be changed by Parliament. No doubt this amendment has included Sindhi as one of the regional languages in the Eighth Schedule. But the same method could be adopted to delete a language now specified in that Schedule. As in the case of the territory of the State, in the case of the provisions relating to language also, no amendment should be undertaken except with the consent of the States.

11. Confining ourselves to the two points which we have dealt with so far [namely, (1) increasing to three-fourths or at least two-thirds the proportion of the States required for ratification of a Constitutional amendment with the condition that they should represent three-fourths or at least two-thirds of the population of all States and (2) subjecting to such ratification any amendment of the Constitution and not only an amendment of the provisions specified in the proviso to article 368], the acceptance of our proposal regarding those two points involves the omission of the opening portion of the proviso to the article and the insertion in the main paragraph itself of the article of the concluding portion of the proviso. Article 368 will accordingly run somewhat on the following lines :—

"368. *Procedure for amendment of the Constitution.*— An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of

Parliament, and when the Bill, after being 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*, is ratified by resolutions to that effect passed by the Legislatures of *not less than* $\frac{\text{three-fourths}}{\text{two-thirds}}$ of the States representing not less than $\frac{\text{three-fourths}}{\text{two-thirds}}$ of the population of all States, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

Explanation.—In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published."

CHAPTER XXI.

SUMMARY OF RECOMMENDATIONS.

Our recommendations are set out below :—

Administrative Relations.

Issue of directions to the States by the Union.—Articles 256, 257 *and* 339 (2) should be omitted. Alternatively, it may be provided that no direction under any of those articles should be issued except in consultation with, and with the approval of, the Inter-State Council.

Article 344 (6).—This article should be omitted.

Inter-State Council.—The Inter-State Council should be constituted immediately. It should consist of all the Chief Ministers or their nominees, with equal representation for all the States, and the Prime Minister should be its Chairman. No other Union Minister should be on the Council.

Every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in Parliament, be referred to the Inter-State Council and its views thereon should be submitted to Parliament at the time of the introduction of the Bill.

No decision of national importance or which may affect one or more States should be taken by the Union Government except after consultation with the Inter-State Council.

Exception may be made in regard to subjects like defence and foreign relations.

The recommendations of the Inter-State Council should ordinarily be binding on the Centre and the States. If for any reason any such recommendation is rejected by the Central Government, such recommendation together with reasons for its rejection should be laid before Parliament and the State Legislatures.

LEGISLATIVE FIELD.

General.—A High Power Commission should be constituted for a re-distribution of the entries of Lists I and III in the Seventh Schedule to the Constitution. This Committee's recommendations regarding the three Lists are as follows :—

List I (Union List)—

Entry 7.—This entry should be made more precise by confining it to armament industries proper.

Entry 32.—Article 285 exempting Union property from the imposition of tax by the States should be repealed.

Entry 40.—Lotteries organised by the States should be omitted from this entry and included in the State List. When including this item in the State List, it should be specifically provided that the States will have the power of prohibiting or regulating any activity in connection with, or relating to, a lottery organised by the Government of another State.

Entry 48.—Futures markets should be transferred to the State List.

Entry 52.—This should be restricted to industries of national importance or of an all-India character or to industries involving a capital of more than one hundred crores of rupees.

Entries 53, 54 *and* 55.—These three entries should be transferred to the State List.

Entry 67.—This entry should be transferred to the State List.

Entry 76.—The audit of the accounts of the States should be transferred to the State List.

Entry 84.—The power to levy excise duties on medicinal and toilet preparations containing alcohol, etc., should be transferred to the State List.

List II (*State List*).—

Entry 23.—This should be modified to include oilfields also.

Entry 51.—This should be altered so as to empower the States to levy excise duties on medicinal and toilet preparations containing alcohol, etc.

New entry.—A new entry should be inserted providing for the making of laws relating to inquiries and statistics for the purposes of any of the matters in the State List.

List III (Concurrent List).—

Entries 5, 8, 17, 19, 22, 23, 24, 25, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 42.—These entries in their entirety should be transferred to the State List.

Entry 45.—The reference to State List should be omitted.

Consultation with States before legislation by Parliament.—Before any Bill is introduced in Parliament in relation to any entry of the Concurrent List, the Inter-State Council and the States should be consulted. At the time of introduction of the Bill, the remarks of the Inter-State Council and a brief resume of the opinions, if any, of the State Governments should be placed before Parliament.

Residuary powers.—

The residuary power of legislation and taxation should be vested in the State Legislatures.

Other legislative provisions.—

Articles 154 (2) (*b*) *and* 258 (2).—No law should be made by Parliament conferring powers or functions or imposing duties upon a State or its officers or authorities without the consent of the State.

Article 169 (1).—The power to abolish or create Legislative Councils should be vested exclusively in the State Legislative Assemblies without the necessity of any Parliamentary legislation.

Article 249.—This article should be omitted.

Article 252.—The State Legislatures should have the power to amend or repeal an Act passed by Parliament under this article.

Reservation of State Bills for consideration by President.—All provisions regarding the reservation of State Bills for the consideration and assent of the President, except the provision in article 288 (2), should be omitted.

Promulgation of Ordinances by Governor: Need for previous instructions from the President.—The proviso to article 213 (1) should be so modified as to restrict it to cases falling under article 288 (2).

FINANCIAL RELATIONS.

Corporation tax, customs including export duties and tax on the capital value of assets.—The base of devolution of revenues on the States should be widened by including—

(*a*) corporation tax ;

(*b*) customs and export duties ; and

(*c*) tax on the capital value of assets,

in the divisible pool to be shared by the Centre and the States.

Excise duties.—All excise duties and cesses, special, regulatory or otherwise, which are shareable at the option of the Union, should all be made compulsorily divisible between the Union and the States.

Additional duties of excise should be continued only with the concurrence of the States.

Even if the additional duties of excise are abolished and they are replaced by the levy of sales tax by the States, the restrictions now imposed on the levy of sales tax by sections 14 and 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), as regards the rate of levy and the stage of levy should be totally repealed.

The power of Parliament under clause (3) of article 286 should not be exercised except in consultation with the States.

Taxes levied and collected by the Union but assigned to the States under article 269.—Every one of these taxes should be levied by the Centre, though the collection may be left to the States.

Surcharge on income-tax.—The surcharge should be merged with the basic rate of income-tax so that it can be shared with the States.

In future, no surcharge should be levied except with the consent of a substantial majority of the States.

Restrictions on the power of the States to levy tax on the consumption or sale of electricity.—Article 287 should be omitted.

Grants.—Grants by the Centre to the States, both for Plan expenditure and non-Plan expenditure, should be made only on the recommendation of an independent and impartial body like the Finance Commission or similar statutory body.

Finance Commission.—It should be expressly provided in the Constitution that the recommendations of the Finance Commission shall be binding on all the parties—Centre as well as the States.

The Finance Commission should be a permanent body with its own secretariat.

A member of the Planning Commission may be appointed as a member of the Finance Commission.

Loans and indebtedness of States.—A committee of experts may be set up to consider the entire issue relating to the indebtedness of States. The committee to be set up may also consider the desirability of constituting an authority analogous to the Australian Loan Council or forming a development bank on the lines of the World Bank to deal with applications made to the Centre by the States for loans.

Relief Fund.—There should be a fund for each State for the relief of distress arising out of natural calamities. The fund may also be utilised for ameliorative measures.

PLANNING.

Planning Commission.—The Planning Commission should be placed on an independent footing without being subject to control by the Union Executive or to political influences. To secure this objective, it should be placed on a statutory basis by Parliament enacting a law providing for the establishment of a Planning Commission.

The Planning Commission to be established by law should consist of only experts in economic, scientific, technical and agricultural matters and specialists in other categories of national activity. No member of the Government of India should be on it. The law to be made in this behalf should deal with the tenure, term of office and conditions of service of the members of the Planning Commission which should have a secretariat of its own. The existing Planning Commission should be abolished.

The duty of the Planning Commission should be to tender advice on schemes formulated by the States.

It will also have the responsibility of making recommendations for consideration by the Finance Commission regarding grant of foreign exchange to States for industrial undertakings started by or in the States.

Each State may have a Planning Board of its own.

Planning and Development.—The Industries (Development and Regulation) Act, 1951 (Central Act LXV of 1951), should be repealed and replaced by an Act providing for the control by the Union of such industries only as are of national importance or of all-India character or which have a capital of more than one hundred crores of rupees.

The provisions relating to grant of licences should be completely omitted.

The State should have the power to grant licences to start new industrial undertakings within the State either in the private sector or in the co-operative sector.

The State should also have the power to start and carry on industrial undertakings in the public sector (except in fields reserved for the Union) with or without foreign collaboration.

Where foreign exchange is needed for any industrial undertaking licensed or started by a State, it should be provided by means of block grants to be allocated to each State on the recommendation of the Finance Commission made in consultation with the Planning Commission.

The Judiciary.

The Supreme Court.—No appeal from the High Court should lie to the Supreme Court in ordinary civil, criminal or other matters, whatever the pecuniary interests involved and whatever the sentence imposed, except in a case involving constitutional issues or the interpretation of a Central Act.

In appointing Judges of the Supreme Court, it is desirable to secure, as far as possible and without detriment to efficiency, representation for the High Courts and the Bar of the different parts of the country.

High Courts.—The power to present an address to the President for the removal of a Judge of a High Court from office should be vested in the State Legislature itself subject to the substantive and procedural safeguards now embodied in the relevant provisions of the Constitution and the Judges (Inquiry) Act, 1968 (Central Act 51 of 1968).

The power regarding the salaries and allowances, leave and pensions of High Court Judges should be vested in the State Legislatures subject to fixation in the Constitution itself of minimum salaries.

Article 222 should be omitted.

Articles 223, 224 *and* 224-*A.*—These three articles should be so amended as to expressly provide that the President will act always in consultation with the Governor who will have to be guided by the advice of his Council of Ministers.

Whenever any particular provision of a State Act is challenged before a High Court on the ground that the provision is unconstitutional, the State Government concerned should have the power to move the High Court for referring the question to a Full Bench of three or more Judges of whom one should be the Chief Justice. The Bench so constituted should consider each and every provision of the Act concerned and once its decision is rendered, no provision of the Act should be challenged thereafter on the ground of unconstitutionality.

The Governor should be empowered to refer any question of law or of fact of public importance to the High Court for its advisory opinion.

THE GOVERNOR.

The Governor should be appointed always in consultation with the State Cabinet. The other alternative will be to make the appointment in consultation with a high power body specially constituted for the purpose.

The Governor should be rendered ineligible for a second term of office as Governor or any other office under Government. He should not be liable to removal except for proved misbehaviour or incapacity after inquiry by the Supreme Court.

A specific provision should be inserted in the Constitution enabling the President to issue Instruments of Instructions to the Governors. The Instruments of Instructions should lay down guidelines indicating the matters in respect of which the Governor should consult the Central Government or in relation to which the Central Government could issue directions to him. Those Instructions should also specify the principles with reference to which the Governor should act as the head of the State including the occasions for the exercise of discretionary powers.

The provision in the Constitution laying down that the Ministry holds office during the pleasure of the Governor should be omitted.

In particular, the Instruments of Instructions should provide as follows :—

(*a*) The Governor should appoint as Chief Minister the leader of the party commanding an absolute majority in the Legislative Assembly.

(*b*) Where the Governor is not satisfied that any one party has an absolute majority in the Assembly, he should of his own motion summon the Assembly for electing a person to be the Chief Minister and the person so elected should be appointed by the Governor as the Chief Minister.

(*c*) The advice of the Chief Minister to the Governor to dismiss any Minister should be accepted by the Governor.

(*d*) Where it appears to the Governor at any time that the Chief Minister has lost the confidence of the majority of the Members of the Assembly, the Governor should immediately and of his own motion summon the Assembly and direct the Chief Minister to secure a vote of confidence in the House.

(*e*) If the Chief Minister fails to seek the vote of confidence, or having sought it fails to get the necessary vote, the Governor should dismiss the Chief Minister and the Council of Ministers headed by him.

It should be made clear that article 163 (1) confers power on the Governor to exercise discretion only in relation to matters in respect of which the Constitution makes express provision, e.g., articles 239 (2), 371 (2), 371-A (1) and (2).

EMERGENCY PROVISIONS.

Emergency confined to a State—Articles 356 and 357.—The provisions may be totally omitted.

In the alternative, sufficient safeguards should be provided in the Constitution itself to secure the interests of the States against the arbitrary and unilateral action of the ruling party at the Centre.

If the provisions are to remain—

(1) the only contingency which may justify the imposition of President's Rule under article 356 is the complete breakdown of law and order in a State, when the State Government itself is unable or unwilling to maintain the safety and security of the people and property in the State ;

(2) the words "or otherwise" occurring in clause (1) of article 356 should be omitted ; and

(3) a proviso should be added to article 356 (1) requiring the President before issuing the Proclamation to refer the report of the Governor to the Legislative Assembly of the concerned State for expressing its views thereon within such period as may be specified in the reference.

Article 365.—This article should be omitted.

National Emergency—Articles 352, 354, etc.—These drastic provisions, such as those relating to financial allocation, should not be put into operation, unless there is war or aggression by a foreign power.

The expression "internal disturbance" occurring in article 352 should be interpreted to mean that it must be comparable in gravity to the repelling of external aggression.

Article 353 (*a*).—No direction under the article should be issued, except after consulting, and with the approval of, the Inter-State Council. In cases of emergency, directions may be issued under the article, but the Inter-State Council should be consulted at the earliest possible opportunity and further action taken in accordance with the recommendations of the Council.

Financial Emergency—Article 360.—This article should be omitted.

Public Services.

All-India Services.—Recruitment to the all-India services should be either by transfer of members of the existing gazetted services under the control of the States or by direct recruitment or by a combination of both these methods, if need be by holding an examination confined to each State under the supervision of the Union Public Service Commission, if deemed necessary or expedient.

Article 312 should be so amended as to omit the provision for the creation of any new all-India service in future.

Preferably English may be the medium of examination for the all-India services, although recruitment may be on a Statewise basis.

Increase in emoluments of Central employees.—As far as possible, emoluments of Government employees—Central and State—should be uniform throughout the country, making due allowance for local or special conditions.

State Public Service Commission.—Article 317 should be so amended as to vest in the State itself the power of removing from office the Chairman or a member of the State Public Service Commission subject to inquiry by the High Court.

Territory of the State.

It should be expressly provided in the Constitution itself that the territorial integrity of a State should not be interfered with in any manner, except in accordance with any one of the following three alternatives :—

(1) The consent of the State concerned should be obtained.

(2) The issue should be referred to, and decided by, a high level judicial tribunal, to be constituted for the purpose and its decision should be binding on all the parties.

(3) The opinion of the people of the area or areas concerned should be ascertained by holding a special poll.

Representation of States in Parliament.

Council of States.—There should be equal representation for each State, that is to say, each State should have the same number of representatives irrespective of population.

There should be no nominations to the Council of States.

House of the People.—The number of seats fixed for each State in 1951 should remain unaltered except where there is increase in population in which case the number of seats may be increased subject to a maximum. However, in no case should the number of seats fixed for each State in 1951 be reduced.

Language.

Members of Parliament should be given the option of addressing the House either in English or in any of the languages specified in the Eighth Schedule to the Constitution.

The link language between the Centre and the States and States *inter se* should be English.

English should continue to be the language of the Supreme Court and the High Courts.

The offices of the Central Government situated in any State should use the official language of that State for transaction of business in those offices with the public. All communications by and between Central Government offices in the State and the Government of the State and its offices should be in the official language of the State.

Members of the Central services employed in a State should be well conversant with the official language of the State.

Trade and Commerce.

Article 302.—This article should be so amended as to omit the reference to intra-State trade and commerce.

It should be expressly provided that the restrictions which Parliament may impose on inter-State trade and commerce should be reasonable.

Article 304 (*b*).—The proviso to this article should be omitted.

Public Order.

The Central Reserve Police Force should not be deployed in any State except at the request or with the consent of that State. Article 355 should be amended accordingly.

Machinery for conducting elections to the State Legislatures.

The delimitation of constituencies made in 1951 should continue.

Both the Representation of the People Act, 1950 (Central Act XLIII of 1950), and the Representation of the People Act, 1951 (Central Act XLIII of 1951), should be amended so as to confine their provisions and the rules made thereunder to elections to Parliament. The State Legislatures must be left free to enact laws in relation to elections to the State Legislatures.

Inter-State Water Disputes.

All disputes relating to inter-State rivers should be decided by the Supreme Court and satisfactory provisions should be made for implementing its decisions.

Sea-bed under Territorial Waters.

Article 297 should be amended so as to vest in the State itself all lands, minerals and other things of value underlying the ocean within the territorial waters adjacent to that State.

Union Executive.

Conventions should be established regulating the formation of the Union Cabinet in such a way as to secure, consistent with the parliamentary type of Government and all that it involves, representation for the various regions of the country.

The number of Central Ministers of Cabinet rank belonging to any one single State should not be more than one-fifth of the total number.

AMENDMENT OF THE CONSTITUTION.

Every amendment of the Constitution, irrespective of the provision involved, should need ratification by the Legislatures of three-fourths or at least two-thirds of the States representing three-fourths or at least two-thirds of the total population of all States.

P. V. RAJAMANNAR,
Chairman.

A. L. MUDALIAR,
Member.

P. CHANDRA REDDY,
Member.

MADRAS,
10*th March* 1971.

APPENDICES

APPENDIX I.

(*See* paragraph 1, Chapter I)

QUESTIONNAIRE.

The Government of Tamil Nadu, by G.O. Ms. No. 1741, *Public (Political)*, dated the 22nd September *1969*, constituted this Committee to examine the entire question regarding the relationship that should subsist between the Centre and the States in a federal set up, with reference to the provisions of the Constitution of India and to suggest suitable amendments to the Constitution so as to secure to the States the utmost autonomy. The terms of reference to the Committee were announced in G.O. Ms. No. 2836, Public (Political), dated the 15th November 1969. In the latter G.O., the Committee has been requested to examine the existing provisions of the Constitution and to suggest the measures necessary for augmenting the resources of the State and for securing the utmost autonomy of the State in the executive, legislative and judicial branches including the High Court, without prejudice to the integrity of the country as a whole. The Committee is issuing this questionnaire with a view to obtaining the views of persons who are interested in, and have made a study of, the subject.

2. The questionnaire is not exhaustive and it need not be taken as restricting the furnishing of information, comments or suggestions to the Committee, which may be considered necessary or useful for the work of the Committee. Such further information, comments or suggestions may be given under the head "Other Suggestions" and annexed to the replies to the questionnaire. The Committee would be grateful if reference to any authorities or decisions in support of the view taken in answering the questionnaire is also given along with the replies. The replies may be sent to Thiru V. A. Venkatachalapathy, Secretary, Centre-State Relations Inquiry Committee, "Kuralagam" (2nd floor), Madras-1, within a month from the date of receipt of the questionnaire.

MADRAS,
Dated 25th February 1970.

P. V. RAJAMANNAR,
Chairman.

CENTRE-STATE RELATIONS INQUIRY COMMITTEE.

QUESTIONNAIRE.

A. Federal System under the Constitution as the basis of Centre-State Relations.

B. Administrative and Executive Fields.

C. Legislative Field.

D. Finance : Taxing Powers ; Distribution of Revenues ; Grants and Loans from Centre.

E. Judiciary—Supreme Court and High Court.

F. Public Services.

G. Elections.

H. Miscellaneous Topics.

CENTRE-STATE RELATIONS INQUIRY COMMITTEE.

QUESTIONNAIRE.

A

FEDERAL SYSTEM UNDER THE CONSTITUTION AS THE BASIS OF CENTRE-STATE RELATIONS.

1. Prof. Wheare has described the Indian Constitution as quasi-federal and has said that India is a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary features. Do you agree? In your opinion, should the Constitution be amended so as to make it a true federation?

2. A federal structure appropriate to a country rests upon its geography, history and tradition. Does the Indian Constitution provide satisfactorily for such a federal structure?

3. "The character of their (Centre and the States) relationship . . . . is that of equals rather than of superior to subordinate. National (Central) laws supersede conflicting local legislation within the sphere of competence of the Central Government, but outside that sphere, which is restricted in scope under the federal plan, locally determined policies prevail within the boundaries of each major local unit." This is the essence of federalism. Does the Indian Constitution satisfy these conditions?

4. The test of a federal system is the sphere of autonomy enjoyed by the States in such a system. Does the Indian Constitution satisfy this test?

5. It has been said that the Indian scheme of federalism is so heavily loaded on the side of a strong Centre that it almost approaches a unitary state. Do you agree?

6. In your opinion, have Centralist tendencies come to prevail in the working of the Indian Constitution? Give examples of such tendencies.

7. What is the impact of planning on Centre-State relations? Is it correct to say that the process of planning leads to a considerable degree of centralisation? Is this consistent with the concept of federalism?

8. How far has the party system contributed to favour unitary trends in Government policies and programmes?

9. When policies are decided by the ruling party and adopted by the Central Government, is not the autonomy of States affected in practice as any deviation from such policies by any State will be viewed with disfavour by the Central Government?

10. Does not centralised policy-making based on party decisions prevent individual State policies?

11. It has been observed that where a single party had control over the affairs at the Centre as well as in the States, an extra-constitutional channel became available for the operation of Centre-State relationships. Has the emergence of different parties in some of the States made any substantial change or does the same position continue?

12. (*a*) There are Ministries or Departments in the Central Government to deal with subjects falling exclusively in the State field, e.g., Education, Agriculture. Do you consider this circumstance is justified, or necessary or desirable? Does not this circumstance affect the autonomy of the State?

(*b*) Do not such Ministries and Departments in the Central Government in any event lead to duplication and involve avoidable expenditure?

(*c*) If the object of having those Ministries and Departments at the Centre is to provide free exchange of ideas, cannot this object be secured through deliberations of the National Development Council?

13. Would you favour a redistribution of powers under the Constitution by vesting all powers in the States except Defence, Foreign Affairs, Communications and Currency and the like which alone shall be vested in the Union with powers necessary to raise finances required for these purposes?

14. It has been stated that the three pillars of the Constitution are (1) a judiciary that is independent, impartial and above the authority of the Government of the day and of Parliament; (2) a Public Service Commission which is absolutely incorruptible and in whose appointment the public should have entire confidence; and (3) an Auditor-General who is independent and impartial.

Have you any remarks to offer regarding these three in the present political set up of the country?

B

ADMINISTRATIVE AND EXECUTIVE FIELDS.

1. Chapter II of Part XI of the Constitution contains provisions empowering the Union to exercise control over the executive power of a State by giving directions to a State for certain purposes, the exercise of such power by the Union depending entirely on the satisfaction of the Central Government that such directions are necessary (Articles 256 and 257). Do these provisions adversely affect the autonomy of the States?

2. Article 262 empowers Parliament to provide by law for the adjudication of disputes relating to waters of inter-State rivers and to oust the jurisdiction of courts including the Supreme Court. Parliament has accordingly enacted the Inter-State Water Disputes Act, 1956 (Central Act 33 of 1956). Section 11 of that Act ousts the jurisdiction of the Supreme Court and all other courts in respect of inter-State water disputes. How far do these provisions safeguard the rights of the States affected in relation to inter-State river waters? What are your views regarding the extension of the jurisdiction of the Supreme Court to such disputes?

3. Article 263 provides for the establishment of an Inter-State Council. But that Council is not given any authority to make any binding decisions, decisions binding not only on the States but also on the Union. In your opinion, does such a Council serve any useful purpose? Do you think that the Council should be given larger powers?

4. "Concentration of administrative powers at a distant centre tends to breed inefficiency and resentment, which in turn sets the minds of the people against the Centre" (Administrative Reforms Commission Report). Do you agree? In what way, would you avoid such concentration?

5. Having regard to the federal principle underlying our Constitution, do you consider it necessary and/or desirable that the Union Government should be divested of the powers conferred by the various articles of the Constitution to take executive action in relation to a State or in relation to a subject which is the principal concern of the State [e.g., articles 150, 213 (1) proviso, 288 (2), 338 (3), 341 (1), 342 (1), 364 (1)]? Should these powers be vested in the State Government?

6. (*a*) Entry 23 of the Union List provides for highways being declared as national highways by or under law made by Parliament. The National Highways Act, 1956 (Central Act 48

of 1956), has declared certain highways to be national highways and it empowers the Central Government to declare other highways to be national highways. According to the Act, all lands appurtenant to national highways, bridges, culverts, causeways, etc., constructed on or across such highways and fences, trees, posts, etc., of such highways, shall be deemed to be included in the national highways and vest in the Union. What measures in your opinion are necessary for safeguarding the right of the State Government and the local authorities within the State to lands, trees, etc., adjoining such national highways?

(*b*) Entry 24 of the Union List enables Parliament to declare by law inland waterways to be national waterways for purposes of shipping and navigation as regards mechanically propelled vessels. Do you think any provision should be made for ensuring the right of the States to control the national waterways?

(*c*) Ancient and historical monuments, if they are declared by or under law made by Parliament to be of national importance, fall within the exclusive jurisdiction of Parliament. Parliament has enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Central Act 24 of 1958), declaring certain monuments to be of national importance. It also contains provisions enabling the Central Government to declare other monuments to be of national importance. What are your suggestions for securing to the States an effective voice in the control and maintenance of ancient monuments of national importance situated within their territories?

C

Legislative Field.

1. Are you satisfied with the distribution of Legislative Powers contained in Lists I, II and III in the Seventh Schedule to the Constitution?

2. A survey of the Lists in the Seventh Schedule to the Constitution indicates a bias or tilting in favour of the Centre. What are the provisions which tend to magnify the authority of the Union (Centre)?

3. Do you suggest any alteration or revision of the Lists to confer more legislative power on the States?

4. Are you in favour of the continuance of the Concurrent List (List III)? Is any revision of the List desirable? In conformity with a federal set up, would you recommend repeal of

the Concurrent List and transfer of the subjects comprised therein to the State List?

5. The Constitution expressly vests residuary powers of legislation and taxation in Parliament. (*Vide* article 248 and entry 97 of List I). Are you in favour of vesting those powers in the State Legislatures instead of in Parliament? Please state your views on this subject in the light of provisions in other Constitutions.

6. Article 249 of the Constitution gives extraordinary power to Parliament to legislate with respect to any matter enumerated in the State List. The only condition is that the Council of States (Rajya Sabha) should declare by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest. Do you think it likely that this power can be used to the detriment of a State when the party in power at the Centre with an overwhelming majority is different from the party in power in a particular State? Should this provision remain or be repealed or modified and if so, how?

7. Article 250 confers on Parliament a similar power while a Proclamation of Emergency is in operation. What is your view regarding this provision?

8. Clause (2) of article 258 enables Parliament by law to confer powers and impose duties upon the State or officers and authorities thereof. This entrustment of functions by Parliament can be effected without the consent of the State authorities and even consultation with the State is not necessary. How far does it safeguard the rights of the State? Is this provision consistent with State autonomy?

9. Under article 252, if the Legislatures of two or more States pass the resolutions referred to in that article, Parliament can enact laws on a State subject. But the State Legislature cannot at any time thereafter amend or repeal any such Act of Parliament. What is your opinion as to empowering the State Legislature to amend or repeal any such Act?

10. Are you in favour of transfer to the State List of matters which, under the Government of India Act, 1935, were in the Provincial or Concurrent List but are now included in the Union List (e.g., entries 60 and 92 of the Union List)?

11. Are you in favour of transfer to the State List of the power to prescribe the medium of instruction in Universities, which under entry 66 of the Union List, is at present vested in Parliament?

12. Would you recommend modification of entry 86 of the Union List so as to empower the State to levy a tax on the capital value of agricultural assets?

13. Bearing in mind the established principles of a federal type of Constitution, do you think it necessary and/or desirable that Parliament (i.e., the Centre) should be divested of the powers conferred by the various articles of the Constitution to legislate in relation to the States or in relation to a subject which primarily concerns a State [e.g., articles 22 (7), 33, 35 (*a*) (i), 154 (2) (*b*), 158 (3), 169 (1), 170 (3), 171 (2), (3) and (4), 172 (1) proviso, 172 (2), 173 (*c*), 191 (1) (*e*), 193, 287, 341 (2), 342 (2)]? Should such subjects be vested in the Legislatures of the States?

14. In your opinion, should entries 52, 53 and 54 be allowed to remain in List I (Union List) or should they be transferred to List II (State List)?

15. (*a*) Do you consider that the provision for reservation of State Bills for the consideration of the President is consistent with the autonomy of the State and its Legislature?

(*b*) Are you in favour of total abolition of such provision or any amendment thereof?

16. With the advent of economic and social planning (an item in the Concurrent List), is it not a fact that the Centre has assumed powers and functions in the formulation, execution and supervision of Plans even in fields which relate to subjects in the State List?

17. Do you consider it necessary and expedient to clearly define the role of the Central Agencies with regard to matters falling within the State List?

18. In your opinion, what functions, if any, should be left for the Central Agencies in dealing with subjects falling within the State List?

19. Should the Centre have any voice at all or exercise any power or authority in matters like Education, Health, Social Welfare, Irrigation, Food and Agriculture and other subjects included in the State List?

20. It has been said that in the State field, the Centre's role should be confined to that of a pioneer, guide, disseminator of information, an overall planner and evaluator. Do you agree?

21. Even with regard to projects in which the Centre is directly interested or which are carried out by the States as the Agents of the Centre, is it necessary and expedient that the Centre's role should be reduced to the minimum ?

D

Finance : Taxing Powers ; Distribution of Revenues ; Grants and Loans from Centre.

1. In an ideal federal system, it should be ensured,—

(*a*) that each of the two Governments (Central and State) must have the power to raise financial resources necessary to perform its exclusive functions ;

(*b*) that the power of the respective Governments in this behalf should be independent of each other, for, if the State Governments have to depend substantially upon central bounty, they might indirectly be deprived of their autonomy in other matters.

Does the Constitution ensure these two conditions ?

If not, can you suggest how they can be fulfilled ?

2. Taxes are specifically divided between Lists I and II and residuary power to levy a tax is given to Parliament by entry 97 of List I. In your opinion, is the division fair and equitable ?

3. Do you think that the taxes in List II are likely to provide the States with resources sufficient to carry out the functions, schemes and projects of the States ?

4. Does not entry 97 of List I curtail the expansion|enlargement of the taxing power of the States ?

5. The resources for raising funds available to the States are comparatively inelastic while the functions allocated to the States involve expanding responsibilities. How would you remedy this imbalance ?

6. Do you advocate the transfer to the States of some of the sources of revenue at present allotted to the Centre ? If you do, what are such sources ?

7. The Constitution contains provisions for distribution of revenues between the Union and the States. In your opinion, is the distribution satisfactory ?

8. In the scheme of distribution of revenues,—

(*a*) there are certain duties levied by the Central (Union) Government but the amount of such duties leviable within one State is assigned to that State;

(*b*) there are certain duties and taxes levied by the Union but the net proceeds of such duties and taxes levied in the States are assigned to the States and distributed among those States in accordance with principles formulated by Parliament by law;

(*c*) there are certain taxes levied by the Central Government which are distributed between the Union and the States in a prescribed manner;

(*d*) there are excise duties levied by the Centre which may be distributed between the Union and the States if Parliament by law so provides, in whole or in part, in which case there is a distribution of the amounts assigned to the States among the States in accordance with principles formulated by law.

In your view, is the scheme of distribution satisfactory?

9. Would you add other taxes and duties levied by the Centre, the proceeds of which should be either totally assigned to the States or distributed between the Centre and the States?

10. Article 270 (4) declares that taxes on income "does not include a corporation tax". The States have been protesting against this exclusion. What is your view?

11. Under article 272, excise duties levied by the Union are not compulsorily distributable between the Union and the States. Would you suggest that they should be, and if so, would you like all such duties to be distributed between the Union and the States or only some of them? If only some, what are they?

12. It has been the complaint of the States that the taxes mentioned in article 269 which are leviable by the Centre but the proceeds of which go to the States have not been sufficiently exploited. Do you agree? If you do, would you suggest transfer of these taxes to the States?

13. In your opinion, does the Finance Commission serve a useful purpose in the matter of distribution of revenues?

14. The recommendations of the Finance Commission are not binding on the Central Government. Would you consider it desirable to make them binding on the Central Government?

15. What is the alternative machinery you would favour for a fair and proper distribution of revenues between the Centre and the States and among the States *inter se*?

16. Article 275 provides for grants from the Centre in aid of the revenues of such States as Parliament may determine to be in need of assistance and different sums may be fixed for different States.

Does this provision give room for discrimination, particularly where the party in power in a State is different from the party in power at the Centre?

17. At present, Plan Grants are made on the basis of the recommendations of the Planning Commission, which is a body established by the Central Government under an executive order. Is it desirable for another body created by law to be entrusted with the responsibility of formulating the principles governing the allocation of Plan Grants?

18. Are you in favour of the Finance Commission being given this function? Or would you suggest another body and, if so, what should be its constitution?

19. An official of the Government of one of the States refers to an instance where the Central Ministry of Health suggested a reduction in the height of rooms of a proposed Medical College and intimated that grants would be given only for the dimensions specified by them. Are you aware of any similar instances of interference by the Centre with State schemes?

20. In regard to schemes sponsored by the State wholly for the amelioration of the conditions of the region, it has been noted that the expenditure of large amounts has been met by the Centre and the benefits have gone to certain limited areas, State-wise or regionally. To what extent should the region or State concerned be responsible for the repayment of such expenditure and to what extent should betterment levy be charged?

21. Do you find any drawbacks in the present scheme of financing State Plan Expenditure through Central Loans?

22. Do you agree that loans for Plan schemes should be given only when they are of a productive nature and assistance for non-productive schemes should be in the form of Capital Grants?

23. What should be the procedure adopted when the Centre takes loans from foreign Governments or grants are given by foreign Governments? To what extent should the States be

consulted in the matter of taking loans and for what purpose, inasmuch as the burden of repayment with interest devolves on the general tax-payer and so the State has also to limit its taxation in the State?

24. It has been noted that overdrafts of two States to the extent of about Rs. 100 crores have been written off by the Centre and to make good the loss, an additional taxation of Rs. 100 crores was levied. Is this consistent with the powers of the Centre and is it fair to other States to write off such overdrafts?

25. Have you any suggestions to make with regard to the indebtedness of the States to the Centre? How does the massive indebtedness of the States to the Centre affect the autonomy of the States?

26. The Study Team appointed by the Administrative Reforms Commission observed:

"Shortcomings are thus discernible in the existing system. The two major drawbacks are the excessive financial dependence of the States on the Centre and the faulty mechanism of devolving funds. A review of the existing system is called for to give the States a position that is self-respecting and at the same time consistent with the strong-Centre concept."

What are the ways by which these drawbacks can be removed?

27. The financial dependence of the States on the Central Government undermines their autonomy in many matters. Give examples from your knowledge, study and experience.

28. For every project, a State is dependent on the Central Government for release of foreign exchange, for procuring essential materials, for sanction of schemes and release of grants. Do you consider this dependence as proper and consistent with a federal set up?

29. It is important for the maintenance of the autonomy of the States (if not their self-respect) that the degree of financial dependence on the Centre should be reduced to the minimum. How would you achieve this?

30. Do you find an inherent rivalry among the States to catch the special favours of the Centre in getting special treatment? Are such competitive trends likely to affect the autonomy of the States?

31. There are two channels through which financial assistance flows from the Centre to the States; one is assured devolution; the other is discretionary grants made by executive orders, e.g., Plan Grants. Do you agree that one way of decreasing the dependence of the States on the Centre would be to increase the resources of the States by assured devolution and constitutionally regulate the scope of discretionary grants?

32. In view of the frequency of famine, floods, earthquakes and other disasters, would you advise that certain percentage of the revenues of the Centre and of the States should be earmarked for a sinking fund which can be utilised for the purpose of relief as occasion arises? If so, what in your opinion should be the Central and the State contribution?

33. Article 360 provides for the Proclamation of Financial Instability of a State and for the exercise by the Centre of large powers relating to the affairs of a State including the giving of directions to the State and the reservation of all Money Bills for the consideration of the President. What is your view regarding the necessity and propriety of such a provision?

E

JUDICIARY.

Supreme Court.

1. Are you in favour of restricting the jurisdiction of the Supreme Court to cases arising between persons residing or carrying on business or employed in two different States or between a State and a person residing or carrying on business or employed in another State or between the Union and a person residing or carrying on business or employed in a State or between one State and another State or between the Union and a State?

High Court.

2. (*a*) Article 217 provides for the appointment of a High Court Judge by the President after consultation with the Chief Justice of India and the Governor of the State and the Chief Justice of the High Court concerned. But a memorandum of procedure has been drawn up by the Central Government according to which the recommendation of the Chief Justice and the Chief Minister of the State in consultation with the Governor is forwarded to the Union Minister of Home Affairs, who in consultation with the Chief Justice of India and the Prime Minister

advises the President about the selection. Bearing in mind that the salaries of High Court Judges are debitable to the State Government, do you think that the intervention of the Union Home Minister and the Prime Minister is necessary in the matter of selection?

(*b*) Should not all powers in relation to the appointment, removal and conditions of service of Judges of the High Court be vested in the State itself?

3. Under article 222, the President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court. In your view, is such a provision desirable and does it not by-pass the State Governments since it does not even provide for consultation with them?

4. Are you in favour of conferment of power on the Governor to obtain the opinion of the High Court on legal or constitutional questions similar to the power conferred on the President to obtain the views of the Supreme Court?

F

PUBLIC SERVICES.

1. Are you in favour of the abolition of the existing All-India Services and the repeal of the provision for the creation of new All-India Services? In case they are to continue, what in your opinion should be the provisions which would effectively secure the rights of the States in relation to these services? Please set out your views with special regard to States where regional language (like Tamil) has been adopted as the official language of the State whereas the official language of the Union is Hindi.

2. A very large number of posts have been created by the Centre and each decade, the number of posts has been doubled and trebled with salaries ranging from Rs. 1,000 upwards. Do you think it is proper that the Union Public Service Commission should be given the power to recruit these personnel and post them to States in view of linguistic States having come into existence and the States having adopted the regional language for all purposes in the administration of the States?

3. What do you think should be the rationale for posting to States of persons recruited by the Centre?

4. It has been noted that the Centre has increased the dearness allowance on several occasions to the Central Government employees working all over India with the natural *sequelae* that the

State Government servants and others employed in industry or quasi-Governmental agencies have necessarily a grievance unless their salaries and dearness allowance are likewise increased.

To what extent should the Central Government in such cases be responsible for additional funds being made available to the State Governments and quasi-Governmental agencies?

5. Consistent with the autonomy of the State, should not the power now conferred on the Central Government to remove from office the Chairman or a member of the State Public Service Commission be transferred to the State?

G

ELECTIONS.

1. It has been stated that the Election Commission should be completely independent and impartial in taking decisions on all matters of procedure that are required to conduct fair and impartial elections.

In your opinion, has it been so? Have you any evidence to the contrary?

2. At present, the power of the State Legislature to make laws with respect to matters relating to, or in connection with, elections to either of its Houses and the preparation of electoral rolls and all matters necessary therefor is subject to the power of Parliament in that regard and the State Legislature can enact laws only in so far as provision in that behalf is not made by Parliament. Parliament has made detailed provisions on the subject. What measures in your opinion are necessary for securing to the State Legislature powers independent of Parliament to enact laws relating to the matters mentioned above and membership of the State Legislature?

H

MISCELLANEOUS TOPICS.

I. Territory.

1. (a) Article 1 (3) of the Constitution provides that the territory of India shall comprise *inter alia* the territories of the States. Under article 3, Parliament may by law form a new State by separation of territory from any State or parts of States, diminish the area of any State and alter the boundaries of any

State. The only condition is that no Bill for the purpose shall be introduced 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. Article 4 (2) lays down that no such law shall be deemed to be an amendment of the Constitution for the purposes of article 368. "The President" virtually means the Central Government. The effect of article 4 (2) is that the two-thirds majority is not essential for any Act by which the area of a State is diminished or the boundaries of any State are altered. It may be noticed that though the Bill is referred to the Legislature of the concerned State, it is only for the State expressing its views on the proposals made by the Centre. The Centre is at liberty to completely disregard such views. Are these provisions consistent with the territorial integrity of the States? What are the measures, if any, which may be adopted for ensuring it?

(*b*) Do these provisions give room for discriminatory action on the part of the Centre when the ruling party at the Centre is different from the party in power in any particular State?

II. SPECIAL PROVISIONS FOR SCHEDULED CASTES, SCHEDULED TRIBES AND BACKWARD CLASSES IN EDUCATIONAL INSTITUTIONS RUN BY RELIGIOUS OR LINGUISTIC MINORITIES.

2. Do you consider it necessary or desirable that the State Government should be vested with power to make special provision for Scheduled Castes, Scheduled Tribes and Backward Classes in educational institutions run by religious or linguistic minorities?

III. GOVERNOR.

3. The Governor is being appointed by the President, that is, by the Central Government. Do you consider it necessary or desirable that some formula should be evolved by which the State Ministry could be associated in the matter of selection of the Governor?

4. (*a*) What are your views regarding the laying down of some principles by way of amendments to the Constitution or by conventions which should govern the relationship between the Governor and the Central Government on the one hand and the relationship between the Governor and the State Cabinet on the other?

(*b*) What are your views regarding provision being made either by way of amendments to the Constitution or by any other method specifying in express terms the matters in respect of which the Governor has to act on the advice of the State Cabinet and those in relation to which he has to act in his discretion ?

(*c*) What is your opinion as regards the insertion of a provision that the Governor shall be bound by the advice of his Cabinet ? Should there be any exception to this provision and if so, in relation to what matters ?

IV. Representation of States in Parliament.

5. Do you consider it necessary to make any modification in regard to the basis on which seats are at present allotted to the States in Parliament, namely, population ? What should be the alternative basis ?

6. Would you recommend the adoption of the principle which obtains in the United States of America of allotting the same number of seats for each one of the States in the Rajya Sabha ?

7. As seats are allotted to each State in the Lok Sabha on the basis of population, if as a result of successful execution of the Family Planning Programme, there is a diminution in the population of a State (as in Tamil Nadu) should there be a corresponding diminution in the number of seats originally allotted ? Or would you suggest that the number should remain the same without fluctuations on account of decrease in population ?

V. Language.

8. Do you think it necessary to amend the provisions of the Constitution relating to the Official Language to ensure that no undue advantage is given to any single language group and that no hardship is caused to the other language groups ?

9. The Constitution accords place of primacy to Hindi, and English is being continued as the official language, only by an Act of Parliament. What are the measures necessary in your opinion for securing parity of treatment in this regard for all the national languages of the country and English ?

10. Has the Assurance given by the late Prime Minister, Pandit Jawaharlal Nehru, been satisfactorily implemented by the Centre ?

11. Are you in favour of retaining English as the sole official language of the Union and the language for purposes of communication between the Union and the States and among the States *inter se* ?

12. What are your views as regards the use in the offices of the Central Government situated within a State of the official language of that State with right to use either English or the official language of the State concerned in dealings with the Union or any other State?

13. Please state your views in relation to the matter in the context of appointments to All-India Services and Examinations by the Union Public Service Commission.

14. In your opinion, should there be modification of the existing provisions of the Constitution empowering Parliament to prescribe any language other than English for use in proceedings in the Supreme Court so that the continued use of English in proceedings in the Supreme Court may be ensured without any alteration by Parliament?

15. Is there any justification for the provision in the Constitution which requires the previous consent of the President before the Governor authorises the use of the regional language (like Tamil) in proceedings in the High Court?

VI. Property.

16. Consistent with the autonomy of the States, should not lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf vest in the adjacent State and not in the Union?

VII. Trade and Commerce.

17. Do you think it necessary that there should be express provision empowering the State to impose restrictions on the freedom of trade, commerce and intercourse within the State or with another State so as to enable the State itself to secure an equitable distribution of articles, supplies and services without the aid of the Centre?

VIII. Planning and Development.

18. It has been repeatedly stated that the States have not been given the freedom to develop certain industries with the co-operation of either indigenous or foreign assistance. While it is no doubt true that any foreign assistance should be obtained with the approval of the Central Government so as not to jeopardise foreign relations, to what extent should the Centre control and interfere with the development of projects by withdrawing their approval and not allowing the States with their reasonable resources to proceed in implementing such schemes?

19. How far is the power now vested in the Central Government regarding licensing of industries and regulation of mines and mineral development consistent with the autonomy of the State and how far does it conduce to the economic growth of the State? Is it necessary and desirable and consistent with the autonomy of the State that the Union should have the powers to grant or withhold licences for industries and mineral concessions?

20. Has the Planning Commission been a success, in your opinion? If not, what are its failures? To what extent can a Central planning body be in a position to plan for the whole of this sub-continent?

21. Should the plans be drawn up by the States with all their implications, financial and otherwise? If any assistance is required from the Centre to have these plans examined by an independent authority, should not the State Governments have the final voice in the matter?

IX. Emergency Provisions.

22. (*a*) State how far the assumption by the Central Government of the Executive and Legislative functions of a State on the ground of constitutional breakdown of government of the State is consistent with the concept of autonomy of the State. In your opinion, should this provision be repealed?

(*b*) On the issue of a Proclamation of Emergency, the Executive and Legislative powers of the Union extend to State subjects also and the States are under the complete control of the Union. Do you think any safeguards should be provided to protect the autonomy of the States during the period of Emergency?

X. Law and Order.

23. The relations between the Centre and the States in the sphere of law and order have been the subject of acute controversy in recent times. Can you give a proper definition of such relations?

24. What steps should be taken in the light of recent events to strengthen the position of law and order and financial stability in order to safeguard the integrity of the country?

25. What is your view regarding the deployment and operation within a State of Central Forces like the Central Reserve Police

Force and the Central Industrial Security Force, bearing in mind that the maintenance of law and order is the primary concern of the State?

26. Do you consider that the responsibility for maintaining police force for the security of the borders of States which are adjacent to foreign countries should be on the Central Government and that they should bear the entire expenditure, if any, incurred by the States on such forces?

XI. HARMONY BETWEEN THE CENTRE AND STATES.

27. In view of several State Governments having been constituted with the help of parties with different ideologies, what in your opinion should be the safeguards for the States if the Central Government has an ideology different from the ideology of any of the States?

28. In your opinion, are any Constitutional amendments necessary for ensuring proper and harmonious relations between the Centre and the States? If so, what are they? If they are not necessary, how would you achieve this object?

29. Though the problems of Centre-State relations might have acquired special importance due to different political parties being in power at the Centre and in the States, is it correct to say that such problems existed even when the same party was in power at the Centre and in the States?

30. Are you in favour of decentralisation to ensure the autonomy of the States? If you are, how would you achieve this?

XII. AMENDMENT OF THE CONSTITUTION.

31. With regard to amendment of the Constitution, do you think that further amplification or clarification is necessary to ensure that the consent of the State Legislatures is obtained before such amendments as relate to matters in which the States are vitally interested are made? (as for example, alteration of areas, boundaries or names of States, legislative or executive powers of States, representation of States in either House of Parliament, taxes or duties in which the States are interested, etc.).

XIII. INTERIM MEASURES.

32. In your opinion, can clause (1) of article 258 be invoked for the devolution on the State Government of the executive powers of the Union in relation to all or any of the matters dealt with above, pending final decision and implementation?

APPENDIX II.

(*See* paragraph 1, Chapter I)

List of persons to whom the Questionnaire was sent by the Committee.

I. Chief Ministers of all States.

II. Chief Secretaries of all States.

III. Leaders of Parties in Parliament (both Houses).

IV. Leaders of Parties in all the State Legislatures (Assembly and Council).

V. Members of both Houses of Parliament hailing from Tamil Nadu.

VI. Members of Tamil Nadu Legislative Assembly and Council.

VII. Chairmen of Finance Commissions.

VIII. Members of the Planning Commission.

IX. Cabinet Ministers at the Centre.

X. Chief Justices of all High Courts.

XI. Advocates-General of all States.

XII. Retired Supreme Court Judges—

Dr. P. B. Gajendragadkar.
Thiru Sirkar.
Thiru K. N. Wanchoo.
Thiru Sinha.
Dr. K. Subba Rao.
Thiru S. R. Das.
Thiru Das Gupta.
Thiru Mudholkar.
Thiru T. L. Venkatarama Iyer.
Thiru N. Rajagopala Aiyangar.

XIII. All Ministers of Tamil Nadu Cabinet.

XIV. (*a*) Chairman, Public Service Commission, Tamil Nadu.

(*b*) Chairman, Union Public Service Commission.

(*c*) Chief Election Commissioner.

XV. *Certain Members of Parliament—*

Acharya J. B. Kripalani.
Prof. N. G. Ranga.
Thiru K. Hanumanthaiya.
Thiru J. M. Lobo Prabhu.
Thiru P. Ramamurthi.
Thiru J. Mohammad Imam.
Thiru R. Dasaratharama Reddy.
Thiru Tenneti Viswanathan.
Thiru N. Srikantan Nair.
Thirumathi Nirulep Kaur.
Thiru Arangil Sridharan.
Thiru V. B. Raju.
Thiru S. M. Krishna.
Thiru M. Narayana Reddi.
Thiru Kameshwar Singh.

XVI. *Individuals—*

Thiru H. V. R. Iengar.
Thiru J. R. D. Tata.
Thiru Arvind N. Mafatlal.
Thiru G. D. Birla.
Dr. A. Ramaswami Mudaliar.
Thiru K. Balasubramania Ayyar.
Dr. B. Gopala Reddi.
Dr. Sri Prakasa.
Thiru E. V. Ramaswami Naicker.
Thiru C. Rajagopalachari.
Thiru V. T. Sreenivasan.
Pandit Hridaynath Kunzru.
Thiru S. Nijalingappa.
Thiru Morarji Desai..
Thiru N. Sanjiva Reddy.
Thiru M. Ananthasayanam Ayyangar.
Thiru B. Shiva Rao.
Thiru H. V. Kamath.
Thiru N. A. Palkhivala.
Dr. A. Krishnaswami.

Thiru A. N. Sattanathan.
Thiru S. Y. Krishnaswami.
Thiru R. A. Gopalaswami.
Thiru D. D. Basu.
Thiru P. Sundarayya.
Thiru Mohammad Ismail.
Thiru M. A. Srinivasan.
Thiru P. Kodanda Rao.
Thiru K. Kamaraj.
Thiru C. Subramaniam.
Thiru M. Bhaktavatsalam.
Thiru D. Sanjeeviah.
Thiru Ajoy Kumar Mukherjee.
Thiru Biju Patnaik.

XVII. *Editors of—*

All Dailies of Tamil Nadu.
Statesman.
Amrita Bazaar Patrika.
Hindustan Times.
Deccan Herald.
Times of India.
Deccan Chronicle.
Current.
Blitz.
Andhra Prabha.
Andhra Jothi.
Prajavani.
Prajamata.
Mathru Bhoomi.

APPENDIX III.

(*See* paragraph 6, Chapter I)

Extracts from certain speeches made in the Tamil Nadu Legislative Council dealing with Centre-State Relations.

Dr. A. Lakshmanaswami Mudaliar, participating in the general discussion on the Budget for 1950–51, said on the 7th March 1950 :

"The Hon. Finance Minister in discussing the general sales-tax, did speak of the Central Government and the likelihood of their passing certain legislation which may probably diminish the quantum of sales-tax that will be available to this Province. It is true that in the Constitution there is provision made for such a purpose. It is also true that in the Constitution many large powers are given to the Centre in regard to taxation. I was one of those who raised their feeble voice of protest, a voice of protest that was not even heard in this House on one occasion, and when repeated, produced a very minor response indeed, that this power of taxation that is being taken by the Centre will so whittle down the resource of the Provinces that ere long they will become like district boards and municipalities, waiting Micawber-like on the generosity of the Centre for this particular concession and that particular concession . . ."

He, as Leader of the Opposition in the Legislative Council, speaking on the Governor's address on the 4th May 1957, said *inter alia* :

". . . It is an undeniable fact that the Government of the State in the present set-up have to take note of certain factors so far as the Central Government are concerned. In fact, it is very difficult for the State Governments to speak in a frank manner. They cannot say that some of the things done by the Centre are good and that some are not so good . . ."

". . . there is a tendency on the part of some of the Central Ministers to believe that they are like the Gods impregnable and that they cannot afford to treat others on the same level as they themselves are treated. I see no difference between a Central Minister and a State Minister . . . I am making this statement deliberately, because in recent years I have noticed an unfortunate tendency on the part of Central Ministers to speak in a way so very disparaging both to the State and to the people of the State . . ."

Late Dr. V. K. John, Deputy Leader of the Opposition, participating in the discussion on the Governor's address in the Legislative Council on the 7th May 1957, said :

"There are three impediments in the way of implementing any plan in this State or in any other State. The first is that there is financial maladjustment between the State and the Centre. We are always begging for loans and grants, and we do not know what we are getting. We have borrowed very heavily from the Government of India. . . On account of the maladjustment between the State and the Centre, we are unable to plan. . . We must go and beg of them. I ask the Leader of this House to record—I think I am voicing the opinion of every Member of this House, not only of the Opposition—that this maladjustment must go. The second impediment is that there is too much interference by the Centre with every department in our State. The Leader of the Opposition spoke about it. . . The Government of India ought not to interfere with the administration of the State Government. There must be decentralization. Why should the Government of India interfere with every department and with every economic or social activity of the State Government? We do not know how to manage our affairs? This is another reason why we are not able to plan. Then there is the third reason. The Government of India, because they have got plenty of our own money, pay their servants very much higher than what we can afford to pay to our servants. The result is that our Government servants are discontented. Why should this happen? This is one country. . . This disparity must go. If this disparity does not go, I say we can never plan and carry on the administration. . . My point is that on account of these three factors, namely, financial maladjustment between the Centre and the State, the Centre's interference in the State Government's administration, and the Centre's payment to their employees of higher salaries, we cannot have any planning at all. I ask the Government of India to concentrate their attention on the question whether the Government of India should be a Federation, where the States will have autonomy, or whether it should be a unitary State where there will be no States. What is our Union? It is neither a Federation nor a Unitary State. It is a combination of the two—neither fish nor flesh. We are groping in the dark. I say, 'Make it a Federation or make it a Unitary State'."

In the course of the general discussion on the Budget for 1957-58, Dr. Lakshmanaswami Mudaliar said on the 3rd July 1957 :—

"I now come to the consideration of the most important aspect of the future of the State in its financial as well as in its administrative aspects. A frank expression of opinion is here indicated. I cannot help stating that there has been a considerable amount of uneasiness among responsible sections of the State as to the manner in which Provincial Autonomy is being whittled down by the Central Government. Too often, directives are being given and in a manner that must necessarily lower the prestige of the Ministry of a State. Much of it is due to the fact that the purse-strings are now controlled by the Centre and that we have come to receive doles even as our local boards are receiving at our hands. . . Unfortunately, the impression is that the State Government have little or no initiative and it must look out . . . for something to fall from the good grace of the Central Government. This has led to the further impression that it can be achieved only if the directives and the wishes of the Central Government are complied with . . ."

He proceeded to add :

"Let me refer to one or two instances. Recently it has been stated that the Home Ministry has given directives in regard to austerity plans, from the removal of the flags from the Ministerial cars to details as to security arrangements and the number of persons that should accompany Ministers on tour. We are very grateful indeed for such advice. A friend of mine took strong exception to this directive and asked, 'What right had the Home Minister to give such a directive'? . . . I am very zealous of the honour and prestige of the Ministers of the State because they have got to command that respect from the State itself . . ."

Dr. John, who spoke on the 4th July 1957, referred to the speech of Thiru C. Subramaniam, Finance Minister, when presenting the Budget to the Madras Legislature on the 29th June 1957, and observed :

"Then, Sir, the Finance Minister referred to the lack of production and the pressure of prices and said—

'The pressure of prices and the rapid depletion of foreign exchange reserves are the two major problems facing the economy of the country.'

Then, he indicated in very strong language the dependence of the State on the Centre and how much this Budget, which was presented to this House, was actually an appendix to the Central Budget and how we could not be sure of our revenue or expenditure on account of our dependence on the Centre."

Adverting to the speech of Dr. Lakshmanaswami Mudaliar made on the 3rd July 1957, Dr. John continued :

". . . Yesterday, my hon. Friend Dr. Lakshmanaswami Mudaliar referred . . . to the hundreds of appointments made by the Central Government. According to me and according to any student of Politics, this is all due to the fact that immediately wants to distribute patronage in some way or other. That is one of the reasons for the increase in expenditure . . . the Central Government are expanding their powers. The States are reduced to nothing. Because when power politicians get into authority there, they not only exercise that authority on the public, but also on the States. . . The result of all these is that the Central Government are all-powerful and every initiative from the State is taken away. Now, the Central Government have duplicated every department of activity. What is the Department that they have not got today? They have got 41 Ministers and so many Secretaries. . . The Central Government interfere with the dignity and prestige of the Ministers of the States. I am not talking about this particular State. Every State is suffering from this sort of interference. The Central Government have spread their hands all over. That is why we have to beg before them. We have to get loans and grants from them. . ."

"My next suggestion is, 'Limit the Centre's powers'. My experience has shown that the framers of the Constitution did not anticipate the conditions which are prevalent today. Limit the Centre's jurisdiction to Foreign Relations, Defence and Communications, and let it have one source of revenue—customs. Let each State give to the Centre, if required some contribution, say, five crores of rupees from out of their revenues for administering the subjects in their charge. They have to confine themselves to the administration of only these subjects and nothing more. There should be a redistribution of authority, that is, autonomy for the States. . . Sir, there are now 41 Ministers at the Centre. Why all this unnecessary waste of money and energy? I repeat that the Centre's jurisdiction should be limited to the three subjects—Defence, Foreign Relations and

Communications. I would also suggest that each State in the country should be equally represented in the Parliament. Irrespective of their size, all States should have an equal number of seats each in the House of Parliament. Today, the Uttar Pradesh is governing India, with the result that we are asked to learn Hindi as the national language. We are not so much subordinate to the Centre as to a State which dominates the Centre. If every State has got equal representation in both the Houses and also on the Cabinet at the Centre, it would greatly improve matters."

He proceeded to add, before concluding his speech :

". . I would warn this Government that they must put up a stiff fight with the Central Government not to interfere with every department of activity. The Centre is interfering in the administration of States. Are we not fit to govern ourselves? Why should they collect taxes in our State? Why should we go and beg of them for money? Why should we go and ask them for loans and pay interest on the loans? I say that the whole financial and other resources between the States and the Central Government are maladjusted. The adjustment has to be set right. "

Late Thiru K. Balasubramanya Ayyar, who participated in the general discussion on the Revised Budget for 1967–68, on the 22nd June 1967 in the Council, said :

". In the Budget Speech, the Hon. Chief Minister mentioned about two Commissions. He wants two Commissions permanently—One Commission to examine continually the financial relations between the Centre and the States and propose suitable remedial action and the other Commission to propose necessary changes in relevant Constitutional provisions. We must all support him in this regard. I would like to refer to another important suggestion which has been made under Article 263 of the Constitution of India. Under that Article they can have Commissions for discussing freely any matter of public interest. The President can order in the public interest any such Commission. Therefore, it is very essential, especially when there are many non-Congress Governments in the States and Congress Government at the Centre. The Centre can have such a Council in the present circumstances so that they can discuss many of the problems with the States, which may arise hereafter and such problems can be avoided by constitution of such Commissions or Councils. I strongly plead for such a Commission."

APPENDIX IV.

(*See* paragraphs 6 and 7, Chapter IV)

Extracts from the White Paper and the Report of the Joint Committee of the British Parliament relating to the Concurrent Legislative List in the Government of India Act, 1935.

The intention of providing for this concurrent field is to secure, in respect of the subjects entered in the List . . ., the greatest measure of uniformity which may be found practicable, but at the same time to enable Provincial Legislatures to make laws to meet local conditions. (Paragraph 114 of the White Paper at page 330, Vol. I of the Report of the Joint Parliamentary Committee).

Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province. Instances of the first are provided by the subject matter of the great Indian Codes, of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease. It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the unco-ordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from Province to Province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a Province. (Paragraph 51, pages 30-31, Vol. I of the Report of the Joint Parliamentary Committee).

The objects of legislation in this field will be predominantly matters of Provincial concern, and the agency by which such legislation will be administered will be almost exclusively a Provincial agency. The Federal Legislature will be generally

used as an instrument of legislation in this field merely from considerations of practical convenience and, if this procedure were to carry with it automatically an extension of the scope of Federal administration, the Provinces might feel that they were exposed to dangerous encroachment. (Paragraph 220, page 121, Volume I of the Report of the Joint Parliamentary Committee)

We have already explained our reasons for accepting the principle of a Concurrent List, but the precise definition of the powers to be conferred upon the Centre in relation to the matters contained in it presents a difficult problem. In the first place, it appears to us that, while it is necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulation, the subjects themselves are essentially provincial in character and will be administered by the Provinces and mainly in accordance with provincial policy; that is to say, they have a closer affinity to those included in List II than to the exclusively federal subjects. (Paragraph 233, pages 144–145, Volume I of the Report of the Joint Parliamentary Committee)

APPENDIX V.

(*See* paragraph 2, Chapter VIII)

Summary of discussions relating to the drafting and passing of the provisions of the Constitution dealing with appointment of Governor.

The Memorandum, dated the 30th May 1947, prepared by the Constitutional Adviser (Sir B. N. Rau), provided for the election of the Governor by the Provincial Legislature according to the system of proportional representation by the single transferable vote. The proposal contained in the Memorandum regarding the mode of selecting the Governor was changed subsequently by the Provincial Constitution Committee and in the Draft Constitution prepared by the Constitutional Adviser in October 1947,* it was provided that the Governor should be elected by direct vote of all persons qualified to vote at a general election for the Legislative Assembly. According to an alternative suggested by the Drafting Committee in its Report, dated the 21st February 1948, the Legislature was to elect a panel of four persons and the President of the Union should appoint one of the four as Governor. This was in response to the wishes of some members of that Committee who felt that the co-existence of a Governor elected by the people and the Chief Minister responsible to the Legislature might lead to friction. The relevant article was taken up for consideration by the Constituent Assembly with the above two alternatives before it. An amendment was moved proposing that the Governor should be appointed by the President. In other words, the amendment sought to reject both the alternatives proposed by the Drafting Committee. The amendment was supported by Pandit Jawaharlal Nehru and was adopted by the Assembly.

---

* For the discussions in the Constituent Assembly referred to in this Appendix, *see* pages 426, 431, 456 and 469, CAD VIII.

APPENDIX VI.

Summary of discussions relating to the drafting and passing of the provisions of the Constitution dealing with Emergency.

SECTION A : BREAKDOWN OF CONSTITUTIONAL MACHINERY IN A STATE.

(*See* paragraph 2, Chapter IX)

At a joint meeting held on the 10th June 1947 of the Union Constitution Committee and the Provincial Constitution Committee, it was decided that where a Governor thought that there was grave menace to the peace and tranquillity of the Province or any part thereof, he might report to the President who would, thereupon, take appropriate action under the emergency powers vested in the Union. The Provincial Constitution Committee which met on the 11th June 1947 accepted this view and it was made clear that the only action which a Governor could take except on advice was to report to the President. In the Report of the Provincial Constitution Committee, dated the 27th June 1947, all that was provided was that the Governor should have a special responsibility in relation to the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof and that if in discharging that special responsibility, he considered it necessary that any legislative provision was necessary but was unable to secure the enactment of the necessary measure, he should make a report to the President for appropriate action being taken by the latter.

When the Report of the Provincial Constitution Committee was taken up for consideration by the Constituent Assembly, Thiru K. M. Munshi moved an amendment to enable the Governor to assume to himself by a proclamation all or any of the powers vested in any Provincial body or authority, if he was satisfied in his discretion that a grave situation had arisen which threatened the peace and tranquillity of the Province and that it was not possible to carry on the government in accordance with the advice of his Ministers. The proclamation of the Governor was to be communicated to the President immediately for suitable action under the latter's emergency powers and would cease to operate after two weeks. Pandit H. N. Kunzru opposed the proposal of Thiru Munshi and the former moved an amendment limiting the Governor's functions to making a report to the President. Pandit Govind Ballabh Pant supported Pandit Kunzru. But Sardar Vallabhbhai Patel accepted Thiru Munshi's amendment which was later adopted by the Assembly.

When the Report of the Union Constituton Committee was considered in the Constituent Assembly, Thiru K. Santhanam drew attention to the fact that whereas the Provincial Constitution Committee's Report enabled the Governor to take action in an emergency for two weeks and to report to the President, the Union Constitution Committee's Report omitted to confer any powers on the President to act in pursuance of the Governor's report and he accordingly suggested the inclusion of a separate section dealing with emergency powers of the President. In other words, Thiru Santhanam's amendment carried the matter a step further and provided for action being taken by the President on receipt of a report from the Governor on the subject or *suo motu*. According to the provision suggested by Thiru Santhanam, the President was empowered to suspend the Provincial Constitution and he was required to report the matter to the Federal Legislature. Sir N. Gopalaswami Ayyangar admitted the need for some provision in the Union Constitution relating to the powers of the Union in the event of an emergency in a Province. He, however, said that the matter should be considered by those who would frame the text of the Constitution.

In the Draft Constitution prepared by Sir B. N. Rau in October 1947, article 160 produced in statutory language the substance of the proposal of Thiru Munshi already mentioned above. In the Draft Constitution finalised by the Drafting Committee in February 1948, article 188 empowered the Governor to assume to himself the functions of the Government of the State and to suspend in whole or in part the operation of any provision of the Constitution relating to any body or authority in the State. It contained other incidental provisions also. The power conferred by draft article 188 was to be exercised by the Governor in his discretion. The Drafting Committee included, among others, another article, namely, article 278, which dealt with the powers of the Union Government when a Proclamation was issued by the Governor of a State relating to the Constitutional breakdown of the State Government. The President was empowered to assume to himself the powers of the State Government or any State authority and to declare that the powers of the State Legislature should be exercisable only by Parliament. Under draft article 278, the President could act only on receipt of the proclamation issued under draft article 188 by the Governor.

The Special Committee (constituted by the President of the Constituent Assembly to examine the Draft Constitution as settled by the Drafting Committee) at its meeting held on the 11th April 1948 suggested that in view of the change in the mode of

selection of the Governors (that the Governors should be nominated by the President instead of being elected), all references to the exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. In the light of this decision of the Special Committee, it was pointed out that article 188, under which the functions of the Governor had to be exercised by him in his discretion, should be omitted. The Premiers of the Provinces discussed the matter with the Drafting Committee on the 23rd July 1949. The Premier of the United Provinces stated that the Governor should not exercise any of the functions vested in him by the Proclamation in his discretion. Thiru T. T. Krishnamachari was of the view that the legislative power should be vested in Parliament as in article 278 of the Draft Constitution, instead of in the Governor. Sir Alladi Krishnaswami Ayyar, however, thought that this would overburden Parliament with legislative work in relation to a State. After some discussion, the matter was left to the Drafting Committee.

In accordance with the decision of the Drafting Committee, Dr. Ambedkar moved an amendment in the Constituent Assembly for the omission of draft article 188 and another for recasting draft article 278. According to new draft article 278, the President was empowered to intervene in the affairs of the State either on the basis of a report of the Governor or otherwise. The President could assume to himself the functions of the State Government or any State authority. He may declare that the powers of the State Legislature should be exercised by or under the authority of Parliament. The draft article contained other incidental provisions also. Another new draft article proposed by Dr. Ambedkar sought to empower Parliament to delegate this law making power in relation to a State to the President or to any authority specified by him. These provisions were the subject matter of a long discussion and several members voiced their anxiety that in the name of emergency, autonomy of the units was being eroded. Thiru H. V. Kamath stated that the President could under the proposed article intervene even without a threat to peace and order. He said that the President should not intervene on the pretext of resolving a ministerial crisis or of reforming maladministration in a State. He was particularly opposed to the insertion of the words " or otherwise " in the draft article (article 278). Prof. Shibban Lal Saksena supported this view and stated that this would reduce provincial autonomy to a farce. Dr. P. S. Deshmukh stated that the power vested in the Union to interfere in the affairs of the State was opposed to the

federal concept and that it would not be administratively beneficial or practicable. Pandit H. N. Kunzru was of the view that instability resulting from a large number of political groups in a State Legislature would not justify Central intervention, that the power sought to be conferred on the Centre was a serious danger and that whenever there was dissatisfaction in a State, appeals would be made to the Central Government to come to its rescue. In his view, the matter should be left to the electorate of the unit to deal with. Pandit Kunzru said : ". . . the Central Government will have the power to intervene to protect the electors against themselves." The power to redress bad Government, Pandit Kunzru believed, should rest with the electors and they should be made to feel their responsibilities. He urged that the Centre should intervene only to protect a State from external aggression and internal commotion. Sir Alladi Krishnaswami Ayyar supported the provision on the ground that it was the duty of the Union to protect the States against internal disturbance and domestic chaos and that the provision would be a bulwark in favour of provincial or State autonomy. Another ground urged by him in support of the provision was that the Central Cabinet would assume responsibility for the governance of the units and that the Central Cabinet was answerable to Parliament. After the reply of Dr. Ambedkar, the draft article was adopted by the Assembly.

Section B : National Emergency.

(*See* paragraph 13, Chapter IX)

The Memorandum, dated the 30th May 1947, on the principles of the Union Constitution prepared by the Constitutional Adviser, contained no specific provision relating to an emergency situation, except a provision conferring on the President a special responsibility for the prevention of grave menace to the peace or tranquillity of the Union or any part of it and in so far as this special responsibility was involved, the President could act on his own personal authority overruling or where necessary ignoring his Council of Ministers. In a Joint Memorandum prepared by Sir N. Gopalaswami Ayyangar and Sir Alladi Krishnaswami Ayyar in June 1947 and circulated to the members of the Union Constitution Committee, they suggested a provision empowering the President to declare by a Proclamation that a grave emergency exists which threatens the security of India, whether by war or

For the discussions in the Constituent Assembly referred to in Section A, *see* pages 579, 729, 798-801, 810-812, 818, 1006 and 1009-1010 CAD IV and pages 131-180, CAD IX.

internal disturbance, and the consequence of such declaration was that Parliament acquired the power to make laws in respect of subjects exclusively within the competence of the unit Legislatures. Although the question of emergency powers of Governors was discussed by the Provincial Constitution Committee on the 9th June 1947, there was no reference at that stage to an emergency situation containing a threat to peace and order of the country as a whole.

In the Draft Constitution prepared by the Constitutional Adviser in October 1947, a provision analogous to section 102 of the 1935 Act was included as article 182. The article enabled the President to declare by a Proclamation that a grave emergency exists whereby the security of India is threatened whether by war or internal disturbance. The draft prepared by the Drafting Committee in February 1948 included the provision enabling the President to declare that a grave emergency exists whereby the security of India is threatened whether by war or domestic violence (article 275). It may be noted here that the expression "domestic violence" does not occur in the existing article 352 and it mentions instead "internal disturbance".

Draft article 275 along with draft articles 276 and 277 were discussed by the Constituent Assembly in August 1949. Draft article 276 now figures as article 353 and draft article 277 corresponds to the present article 354 which was included on the recommendation of the Expert Committee on Financial Provisions.

Draft article 277 (now article 354) was discussed by the Constituent Assembly on the 19th and 20th August 1949. Several members felt that the powers conferred by draft article 277 might undermine the autonomy of the units and leave them at the mercy of the Centre. Pandit Kunzru moved an amendment under which the Union Government could hold up the distribution of divisible portion of the income-tax revenue during an Emergency, but could not interfere with any other source of revenue. He drew attention to the fact, that these other sources of revenue consisted largely of items like stamp duties, excise duties on medicinal and toilet preparations, estate duty, taxes on railway fares and others, etc. He pointed out that the Central Cabinet may by telling the units that the financial settlement embodied in the Constitution would be changed, hold up the activities of the units after they have entered into financial commitment on the assumption that the shareable taxes would accrue to them. He was of the view that it would create serious discontent and

described the article as " an expression of nothing but the undiluted financial autocracy of the Centre ". Some other members also were critical of the draft article. Sir Alladi Krishnaswami Ayyar defended the article on the ground that the whole thing would be decided by the Central Cabinet. After the reply of Dr. Ambedkar, the draft articles became part of the Constitution.

Section C : Financial Emergency.

(*See* paragraph 17, Chapter IX)

The provision for dealing with a financial emergency was thought of only towards the very end of the business of Constitution making. The idea seems to have originated in the Constituent Assembly Secretariat. In the D.O. letter from that Secretariat addressed to the Ministry of Finance on the 5th September 1949, it was proposed that provision should be made in the Constitution authorising the President to make a declaration by Proclamation, that a situation has arisen whereby the financial stability or credit of India is threatened. The draft article proposed by the Constituent Assembly Secretariat further stated that during the period the Proclamation was in force, the Union could issue directions to the Government of any State to observe such canons of financial propriety as may be specified in the direction and such other directions in this behalf as the Union may deem necessary and adequate. Any such direction may include a provision requiring all Money and Financial Bills to be reserved for the consideration of the President after they had been passed by the State Legislature. The Ministry of Finance replied on the 8th of the same month expressing their satisfaction with the draft article, but pointed out that there may be some difficulty in the practical application of its provisions. The Finance Ministry stated that it would be preferable if it could be provided that the Centre should be in a position to issue directions to States in financial matters at any time whenever any action taken by a State was likely to affect the stability of federal finance or was at variance with the financial and economic policy of the Centre. The Finance Ministry was of the opinion that if the Drafting Committee considered that the adoption of this suggestion was not practicable on the ground that it would evoke very strong opposition from the States, the Finance Minister would welcome and support the inclusion of the draft as prepared by the Constituent Assembly Secretariat.

For the discussions in the Constituent Assembly referred to in Section B, *see* pages 103-130 and 504-523, CAD IX.

On the 10th October 1949, the Finance Ministry forwarded to the Constituent Assembly Secretariat a new draft of the article. The new draft referred to the stability of the finances of the Union or the financial or economic policy of the Union being endangered. It referred to the threat to the financial stability or credit of the country as a whole, but not to that of any part of the country as such. The other provisions of the draft prepared by the Constituent Assembly Secretariat, were reproduced that is, issue of directions to the States regarding observance of canons of financial propriety and reservation of Money and Financial Bills of the State for the consideration of the President.

Dr. Ambedkar moved the new article in the Constituent Assembly on the 16th October 1949. The draft as moved in the Constituent Assembly by Dr. Ambedkar included a provision enabling the Union in a financial emergency to reduce the salaries and allowances of its own staff including those of the Judges of the Supreme Court and the High Courts and to direct a State to reduce the salaries and allowances of its staff. Dr. Ambedkar explained that the provision was more or less on the lines of the National Recovery Act, 1930, or thereabouts passed in the U.S.A., which gave power to the President to make similar provisions in order to remove the economic and financial difficulties that had overtaken the American nation as a result of the great depression. He referred to the then economic and financial situation of India and said that the Constitution should give sufficient power to the Central Government to deal with it. Thiru K. M. Munshi supporting the article pointed out that the country was on the brink of a precipice. Several amendments were moved to the article. Prof. Shibban Lal Saksena desired that Parliament should be enabled to encroach upon the State List during such a situation.

It was Pandit H. N. Kunzru who spearheaded the opposition to the article. He did not see anything in the article which enabled the President to deal with an economic depression in the way President Roosevelt had tried to do. Pandit Kunzru said that the whole object of the amendment was to reduce expenditure and prevent the State Governments from giving up any of their existing sources of revenue. He pointed out that none of the chief sources of revenue could be misused by the States and he could discover no reason for the new article except the anxiety of the Centre to acquire complete control over the budgets of the States and ability to dictate to them what financial policies they should adopt. The amendments were negatived and the article was embodied in the supreme law of the land.

[There appears to be no such statute in force in the U.S.A., as the National Recovery Act. Attention is, in this connection, invited to footnote 2 at page 821 of *The Framing of India's Constitution—A Study* by B. Shiva Rao. Dr. Ambedkar was presumably referring to the National Industrial Recovery Act, 1933. The American Act of 1933, was designed to shorten working hours, raise wages and increase employment. The National Recovery Administration, which that Act set up, was to work with industry in setting up codes in a joint battle against the depression. The American statute cited as a precedent by Dr. Ambedkar had nothing to do with financial administration such as budgeting and passing of Bills by the Legislatures of the States which formed the Union. It was a socio-economic measure aimed at creating a healthy climate for the co-ordination of industries and for securing harmonious relationship between labour and management. Pandit Kunzru pointed out in the Constituent Assembly that the American statute was a temporary measure designed to meet a particular need, the great depression. The Act was declared unconstitutional by the Supreme Court.]

For the discussions in the Constituent Assembly referred to in Section C, *see* pages 361-362 and 368-373, CAD X.

APPENDIX VII.

(*See* paragraph 2, Chapter XI)

Summary of discussions relating to the drafting and passing of the provisions of the Constitution dealing with Territory of the State.

Sir B. N. Rau, Constitutional Adviser, included in his Memorandum a provision on the lines of section 290 of the 1935 Act empowering Parliament to alter the areas, boundaries, etc., of the States; but provided that the consent of the Legislature of every province affected should be obtained before any such law was passed. The Draft Constitution as finalised by the Drafting Committee in February 1948 accordingly provided that before a new State was formed by separation of territory from an existing State or the boundaries of any existing State were altered, etc., either of the following two conditions should be satisfied, namely, that a representation in that behalf should have been made to the President by a majority of the representatives of the territory in the Legislature of the State from which the territory is to be separated or excluded, or in the alternative, a resolution in that behalf should have been passed by the Legislature of the State affected by the proposal.

One of the suggestions made on this point was that when the proposal contained in the Bill affected the boundaries or name of any State, the previous consent of the Government of the State should be obtained before the introduction of any Bill in Parliament for the purpose. The Drafting Committee, after further consideration, re-drafted the provision so as to lay down that it would be sufficient to obtain the views of the Legislature of the State concerned. But Sir Alladi Krishnaswami Ayyar in a separate note suggested that provision should be made to the effect that no law for the alteration of the boundaries of a State should be passed unless a representation in that behalf was made by the majority of the representatives of the Legislature. In suggesting this provision, he set out the following reason, among others :—

"In dealing with the article, while on the one hand it may be conceded that, having regard to the fact that the Provinces of India as at present constituted are not based on any constitutional principle and therefore an easy method of the realignment of States must be provided for, it is also necessary that some kind

of fixity must be given to the different units consistently with the federal principle, as otherwise the area of the States will be in a state of perpetual flux."

Article 3 was discussed by the Constituent Assembly on the 17th and 18th November 1948. Prof. K. T. Shah moved an amendment requiring that every legislative proposal for increasing, diminishing or altering the name or boundaries of a State should originate in the State Legislature. While speaking on the amendment, the member stated that the proper course would be to consult the people themselves who are affected, if not by a direct referendum, at least by consulting the Legislature. He stated that the alteration must be made only as and how the people primarily affected desired it and not in accordance with the preconception of the Centre. He indicated his personal preference for a direct referendum. Dr. Ambedkar, while moving the official amendment for the redraft of the proviso [laying down that in the case of the then Indian States the consent of the State concerned should be obtained before altering the area or boundaries of any State and that in the case of other States, that is, the former Governors' Provinces, it would be sufficient to consult the State concerned], said that the President would request the Chief Minister or the Governor of the State to table a resolution for discussion in the State Legislature so that ultimately the initiative would be that of the local Legislature and not of Parliament.

Thiru K. Santhanam, opposing the amendment moved by Prof. Shah, stated that the amendment would effectively prevent linguistic minorities from asking for separation of their territories and cited the case of the Madras Province and the demand for a separate Andhra State. Thiru Santhanam pointed out that the Professor's amendment would pave the way for absolute autocracy of the majority. Thiru Rohini Kumar Chaudhari stated that no motion relating to the matter should be considered by Parliament, if the State concerned was not in favour of such motion. Thiru Brajeshwar Prasad, while criticising the article, stated that it was designed to wipe out the existence of Provinces or States and he illustrated his point by stating that if the majority party in power at the Centre wishes to wipe out any Province, this could be easily achieved by dividing the State into various units and placing those units under the direct administrative control of the Government of India or by merging the State with another neighbouring State. Article 3 was after discussion passed by the Constituent Assembly.

Article 3 was re-opened for further discussion on the 13th October 1949. This was necessitated by certain developments which took place subsequent to the adoption of article 3 by the Constituent Assembly. The then Indian States had all been merged in neighbouring Provinces or brought on a par with Provinces. The various articles of the Constitution had to be amended to give effect to this new development. In that context, Thiru T. T. Krishnamachari moved an official amendment to the proviso to article 3 as passed on the 18th November 1948 so as to lay down that as in the case of Governors' Provinces, in the case of Indian States also, it would be sufficient to ascertain the views of the Legislature concerned and that the consent of the Indian State would not be necessary. In the course of the discussion, Thiru H. V. Pataskar traced the history of the provision. He pointed out how the provision was first inserted in the 1919 Act and how the provision inserted by the British Parliament remained a dead letter. Thiru Pataskar moved an amendment to the effect that any law altering the name or boundaries of a State should be deemed to have been passed only if a majority of the members of the House of the People representing the State concerned supported the same. His reason for the amendment was that if one Province is to be separated from another or one area is to be taken out from one Province and added to another, the matter should be decided not by the votes of persons representing one of them but by the votes of all persons affected by the change. But after discussion, the President of the Assembly ruled the amendment of Thiru Pataskar out of order. The official amendment moved by Thiru Krishnamachari was approved by the Assembly.

For the discussions in the Constituent Assembly referred to in this Appendix, *see* pages 437-440, 446, 463 and 465, CAD VII and pages 210-213 and 215, CAD X.

APPENDIX VIII.

(*See* paragraph 1, Chapter XIV)

Summary of discussions relating to the drafting and passing of the provisions of the Constitution dealing with Trade and Commerce.

Even before the Constituent Assembly took up for consideration the provision to be made regarding freedom of trade and commerce, the question was examined by some eminent jurists, a Sub-Committee and an Advisory Committee. Sir Alladi Krishnaswami Ayyar, in his Note, dated the 14th March 1947, suggested that care should be taken to bring in the freedom of inter-State and inter-Provincial trade. Thiru K. M. Munshi, in his Note, dated the 17th March 1947, suggested that the citizens should have the fundamental right to trade within the territories of the Union. The Sub-Committee on Fundamental Rights, in its draft Report, dated the 3rd April 1947, suggested the inclusion of a clause, to the effect that subject to regulation by the law of the Union, trade, commerce and intercourse among the units, whether by means of internal carriage or by ocean navigation, should be free, with the proviso that the unit may by law impose reasonable restrictions on such freedom in the interest of public order, morality or health.

Sir B. N. Rau, Constitutional Adviser, stated that the clause was, for the most part, based on section 92 of the Australian Constitution. Sir Alladi Krishnaswami Ayyar, while commenting on the draft Report, stated in his Note, dated the 14th April 1947, that it must be made clear that goods from other parts of the country coming into the territory of a unit cannot escape duties and taxes to which the goods produced in the unit itself were subject. He also wanted it to be made clear that it will be open to the unit to impose restrictions in an emergency. The Sub-Committee, in its Report, dated the 16th April 1947, recommended that although the citizens should be entitled to freedom of trade, commerce and intercourse without being subject to any burden in the form of internal duties or taxes of customs, some provision would be necessary to enable the Indian States to continue the levy of duties and taxes for some time. It reproduced the provision as found in its draft Report with the addition of two more provisos enabling the units to impose duties and taxes, but without discrimination as between goods produced within the unit and those produced outside.

The Advisory Committee on Fundamental Rights considered the provisions at its meetings held on the 21st and 22nd April 1947. Thiru C. Rajagopalachari suggested that provision should be made empowering the units to impose taxes for genuine purposes of revenue. He argued that if the Indian States were to impose taxes and duties for revenue, the Provinces also should be enabled to do it. Sir Alladi Krishnaswami Ayyar stated that the States were not being given a blank cheque in this matter. Although Thiru C. Rajagopalachari pressed his suggestion, Sir Alladi Krishnaswami Ayyar countered the argument by pointing out that the theory of self-sufficiency of different units was dangerous in the country since they were dependent on one another. In the Report, dated the 23rd April 1947, of the Advisory Committee, the provision was reproduced as found in the final Report of the Sub-Committee. The Union was given power to regulate by law trade, commerce and intercourse and the units were enabled to impose reasonable restrictions in the interest of public order, morality or health or in an emergency and to levy taxes. This power was subject to the condition that no discriminatory taxes should be imposed by the units. The Advisory Committee recommended that the Indian States should be shown special consideration and that the Union should enter into agreements with them enabling the States to continue levy of internal customs up to a maximum period to be specified in the Constitution.

The provision was taken up for consideration by the Constituent Assembly on the 1st May 1947. Thiru Munshi moved two amendments which are not very material for our purpose. The clause as amended was adopted by the Assembly. The Constitutional Adviser, in the Draft Constitution prepared by him in October 1947, included the provision as settled by the Assembly in May of that year. The clause made the right of trade, commerce and intercourse subject to regulation by federal law. It enabled the units to impose non-discriminatory taxes. The Federal Parliament was competent to impose restrictions in the interest of public order, morality or health or in cases of emergency. The Drafting Committee, in the Draft Constitution of February 1948, included this provision with some modifications in regard to the placement of the provision. Draft article 16 declared that trade, commerce and intercourse throughout the country should be free subject to draft article 244. Stated briefly, draft articles 243, 244 and 245 empowered the State to impose taxes on goods brought into the State, provided no discrimination was made between local goods and goods brought

from outside the State. The State was enabled to impose reasonable restrictions on the freedom of trade and commerce in the public interest. The only new provision incorporated at this stage was that relating to the power of Parliament to set up an authority for giving effect to the provisions relating to inter-State trade and commerce.

On the publication of the Draft Constitution, Sir Alladi Krishnaswami Ayyar commented that the power of interference conferred on the State Legislature was too drastic and much wider than that provided in the original draft. He expressed the apprehension that this provision would practically nullify the freedom of trade secured by article 16. The West Bengal Legislative Assembly, which expressed the same view, recommended that the power of the States to impose restrictions on freedom of trade and commerce should be limited to the imposition of restrictions for the purpose of the administration of Provincial duties of excise or of controlling price and distribution of commodities in the national interest. The Ministry of Industry and Supply of the Government of India suggested the deletion of the provision altogether. But Sir B. N. Rau justified the retention of the provision on the ground that it would be necessary for the State to restrict the freedom in public interest during a period of depression resulting from destruction of crops by flood or otherwise or to restrict the freedom of intercourse with inhabitants of a neighbouring State on the outbreak of an epidemic disease like plague.

Draft article 16 was considered in the Assembly in December 1948. Thiru C. Subramaniam objected to the provision being adopted as an article under Fundamental Rights. In his view, the unqualified subjection of the right to legislation by Parliament and to imposition of restrictions by States took away its fundamental character. Dr. Ambedkar replying to this criticism said that the provision was inserted in the context of the then prevailing political situation arising out of the unwillingness of the Indian States to allow trade and commerce to be included as a Union subject. Draft article 16 was ultimately adopted by the Assembly. Draft articles 243, 244 and 245 were taken up for consideration in June 1949. However, at the instance of Thiru T. T. Krishnamachari, the consideration of the articles was postponed. In September 1949, Dr. Ambedkar moved amendments relating to this subject. He proposed the deletion of the articles and in their place, he proposed the insertion of a new Part containing five articles. The first article laid down the general principle of freedom of trade and commerce. The second article empowered Parliament to impose by law restrictions in the public interest. The third article prohibited

Parliament and the State Legislatures from making any discrimination between one State and another, except when Parliament found it necessary to do so to deal with a situation arising from the scarcity of goods in any part of the country. The fourth article enabled the State Legislatures to impose non-discriminatory taxes and reasonable restrictions on inter-State and intra-State trade, commerce and intercourse, in the public interest. The fifth article provided for the establishment of an authority by Parliament to enforce the provisions.

Pandit Thakur Das Bhargava was of the view that inter-State trade and commerce should be absolutely free. Dr. P. S. Deshmukh considered that the drafting of the provisions was involved and that the entire question of trade and commerce should be subject to determination of policy by a future Parliament. Thiru T. T. Krishnamachari on the other hand stated that the provisions were necessary in the interest of the future economic progress of the country. Sir Alladi Krishnaswami Ayyar also justified the insertion of the provisions as moved by Dr. Ambedkar. One of the amendments moved by Pandit Thakur Das Bhargava sought to provide that the restrictions which Parliament could, in the public interest, impose on the freedom of trade and commerce, should be reasonable. Thiru Krishnamachari and Sir Alladi Krishnaswami Ayyar opposed this amendment which was negatived by the Assembly.

The question was again considered in October 1949 by the Constituent Assembly. Two more articles were sought to be added; one of them enabled the Indian States to continue for the maximum period specified in it the levy of taxes or duties which they were levying and the second article saved existing laws. When Thiru Krishnamachari suggested the deletion of draft article 16, several members opposed its omission on the ground that a fundamental right should not be taken over to another Chapter of the Constitution. Sir Alladi Krishnaswami Ayyar in reply stated that the transfer of the provision in regard to freedom of inter-State trade and commerce from one Part of the Constitution to another, did not alter or affect the nature of the right embodied in it. He pointed out that a mere placing of a provision in the Chapter relating to Fundamental Rights had no particular sanctity and that its justiciability did not depend on such placement. Ultimately, the provisions were adopted by the Constituent Assembly. These provisions now figure as articles 301 to 307 under Part XIII.

For the discussions in the Constituent Assembly referred to in this Appendix, *see* pages 465-468, CAD III, pages 798—800 and 802-803, CAD VII, page 819, CAD VIII, pages 1123—1126, 1128, 1131-1132, 1138 and 1141—1143, CAD IX and pages 175-176 and 348—352, CAD X.

APPENDIX IX.

(*See* paragraph 11, Chapter XV)

Summary of discussions relating to the drafting of entry 2 of the Union List dealing with the Armed Forces of the Union.

In the first Report of the Union Powers Committee, dated the 17th April 1947, the relevant entry ran as follows :—

"The raising, training, maintenance and control of naval, military and air forces and employment thereof for the defence of the Union and the execution of the laws of the Union and its units; the strength, organization and control of the existing armed forces raised and employed in Indian States."

At a joint meeting of the Union Powers and Union Constitution Committees held on the 1st July 1947, the above entry was approved. In the second Report of the Union Powers Committee, dated the 5th July 1947, the reference to the armed forces of the Indian States was explained and it was stated that the intention was to maintain all the then existing powers of co-ordination and control exercised over such forces. The entry mentioned above was reproduced with some drafting changes of a formal nature not affecting the substance. In the Draft Constitution prepared by the Constitutional Adviser in October 1947, the entry was reproduced with some slight alterations. It also referred to the armed forces of the Indian States. In the Draft Constitution prepared by the Drafting Committee in February 1948, the entry as set out in the draft prepared by the Constitutional Adviser was reproduced with the modifications that it was made clear that the three branches of the armed forces mentioned therein were those of the Union and the reference to Indian States was replaced by a reference to the States specified in Part III of the First Schedule. The Chairman of the Drafting Committee expressed his strong feeling that the second part of the entry relating to the armed forces of the Indian States should be omitted in order to preclude such States from maintaining any armed forces of their own.

The Ministry of Defence, while commenting on the Draft Constitution, stated in June 1949 that in order to make it clear that the Provinces would not have any authority to raise any military, naval or air force, the words "of the Union" should be omitted and the entry expanded to include "Territorial Army, National Cadet Corps, Militias, Scouts and other Armed Forces (excluding Armed Police)". The Defence Ministry also referred

to an amendment given notice of by Pandit H. N. Kunzru suggesting the deletion of the second part of the entry relating to the armed forces in the States. That Ministry raised the question whether the States should continue to have their own forces and expressed its view that it would be best to have all the armed forces in India not only under the control of the Central Government but also owing allegiance only to the Central Government; but left the feasibility of the issue for consideration by the States Ministry. Thiru K. Santhanam had given notice of an amendment for the insertion of a new entry in the State List relating to Provincial Militia. The Defence Ministry, commenting on this amendment, thought that this should never be accepted and that the Provinces should be permitted to have only whatever can be covered by the term "Police". It invited attention to its remarks relating to entry 4 of the Union List, referred to above.

The Drafting Committee meeting on the 23rd July 1949 decided that the entry in question should be suitably modified to include therein a reference to the maintenance by the Government of India of Armed Police Forces or other similar forces on the lines of the provision contained in entry 1 of List I of the Seventh Schedule to the 1935 Act as originally enacted. [Two points have to be mentioned here. It will be observed from entry 1 of the Federal Legislative List in the 1935 Act as originally enacted that the entry contained no reference to the maintenance by the Central Government of an armed police force. It referred only to armed forces as such. In fact, the original entry excluded from its purview military or armed police maintained by Provincial Governments. The second point to be noted is that entry 2 of the Union List in the Seventh Schedule to the Constitution as it now stands contains no reference to the maintenance by the Government of India of an armed police force].

APPENDIX X.

(*See* paragraph 6, Chapter XX)

Summary of discussions relating to the drafting and passing of the provisions of the Constitution dealing with Amendment of the Constitution.

The question of evolving a suitable formula for amendment of the Constitution was taken up by Prof. K. T. Shah in 1946 itself. In his letter, dated the 22nd December 1946, addressed to Dr. Rajendra Prasad, Prof. Shah enclosed some General Directives prepared at the instance of Pandit Jawaharlal Nehru in July of that year. According to the procedure suggested by Prof. Shah, all proposals for amendment of the Constitution, with certain exceptions, had to originate in the Union Legislature and be adopted by a majority of at least three-fifths of the total membership of each House. They had to be ratified by at least two-thirds of all the Legislatures of the units. In addition, it was stipulated that the amendment should receive the support of two-thirds of the total membership of the Legislature. The excepted categories were re-distribution of boundaries of the units, Fundamental Rights and rights of minorities. Proposals for the alteration of boundaries by the Union had to originate in the unit Legislature concerned and be adopted by two-thirds majority and then only they were to be placed before the Union Legislature. Amendments affecting the Fundamental Rights and minority rights required a referendum on the initiative of the Head of the State and approval by a two-thirds majority of the total adult citizens or of the members of the minorities concerned.

The Constitutional Adviser, in his Questionnaire sent with his letter, dated the 17th March 1947, invited suggestions and opinions regarding the provisions that should be made for amendment of the Constitution. He explained the provisions of the various Federal Constitutions relating to amendments and those of South Africa and Ireland. In reply to the Questionnaire, Sardar K. M. Panikkar stated, among other things, that the amendment should be ratified by the Legislatures of the units. Dr. S. P. Mookerjee suggested two-thirds majority in each House of Parliament and two-thirds majority of a constitutional convention or ratification by two-thirds of the Legislatures of the units. Rajkumari Amrit Kaur suggested referendum and approval by a two-thirds majority. Dr. P. Subbarayan was of the view that any amendment of the Constitution should be

effected by the Union Legislature but only on the recommendation of the Legislature of the unit. Thiru B. G. Kher suggested that either the Union Legislature or the unit Legislature should propose amendments to the Constitution. He suggested approval by two-thirds of each House of Legislature, both of the Union and of the unit.

In the Memorandum, dated the 30th May 1947, the Constitutional Adviser provided that an amendment may be initiated in either House of the Union Parliament, that it should be passed by a majority of not less than two-thirds of the total number of members of that House and that it should be ratified by the Legislatures of not less than two-thirds of the units. Sir N. Gopalaswami Ayyangar and Sir Alladi Krishnaswami Ayyar, in their Memorandum on the principles of the Union Constitution prepared in June 1947, suggested that the amendment should be passed by a two-thirds majority of the total membership of each Chamber of the Union Legislature and approved by the Legislatures of not less than two-thirds of the units.

The question was considered on the 30th June 1947 at a joint meeting of the Union Powers and Union Constitution Committees. Two changes were made in the clause. One was that instead of requiring a majority of two-thirds of the sanctioned strength of each House of Parliament, such majority should be of the members present and voting. The second change reduced the number of units required for ratification from two-thirds to one-half. The question was not, however, finally decided and was left to be examined by a Sub-Committee. Pending such examination, the Union Constitution Committee in its Report, dated the 4th July 1947, reproduced the clause as proposed by it, that is, passage in each House of Parliament by a majority of not less than two-thirds of the members of the House present and voting and ratification by at least one-half of the units. The Sub-Committee mentioned above met on the 11th July 1947 and decided that the ratification should be by a majority of the Legislatures of the units. The Union Constitution Committee met on the 12th July 1947 and considered the Report of the Sub-Committee. It suggested passage of the amendment in each House of Parliament by a majority of its sanctioned strength and also by a majority of not less than two-thirds of the members of the House present and voting. Ratification by the Legislatures of the units representing a majority of the population of all the units of the Federation was to be insisted upon only in the case of changes in the Federal Legislative List, representation of units in the Federal Parliament and powers of the Supreme Court,

A Supplementary Report, dated the 13th July 1947, was presented by the Union Constitution Committee. This Report reproduced the provision as settled at the meeting held on the 12th July 1947. When these items were taken up for consideration by the Constituent Assembly on the 31st July 1947, Sir N. Gopalaswami Ayyangar requested the Assembly to agree to their postponement on the ground that an important issue had been raised as to the provision to be made for conferring on the Provincial Legislatures some constituent power for amending the Constitution of the Province.

The Drafting Committee considered this provision at its meetings held on the 6th, 9th and 10th February 1948. At its meeting on the 6th February 1948, the Committee re-drafted clause 232 incorporating two main changes. The first modification related to reservation of seats in the Legislatures for minority communities. The second change conferred a limited constituent power on the State Legislatures to amend Chapter III of Part V. That Chapter, consisting of draft articles 129 to 158, dealt with the composition of the Provincial Legislature and qualifications and disqualifications for membership thereof, legislative procedure and elections to the Provincial Legislature. Any such amendment could be initiated in either House of the Legislature of the unit and, after being passed by a majority of the total membership of each House, it had to be ratified by Parliament by the same majority in each House of Parliament and thereafter assented to by the Governor or the President.

The provision was further revised by the Drafting Committee at its meeting held on the 9th February 1948. The constituent power of the State Legislatures was confined to making changes in the provisions of the Constitution relating to the number of Houses of the State Legislature. It was also provided in the re-draft of the 9th February that a Constitution Amendment Bill passed by the State Legislature should be assented to by the President alone. Yet another change suggested was that the ratification by the Legislatures of the States would be required in the case of amendment not only of the Union Legislative List, but also of the State or Concurrent Legislative List.

The provision was finalised by the Drafting Committee at its meeting held on the 10th February 1948. The draft as finalised was included as article 304 in the Draft Constitution published in February 1948. Draft article 304 omitted reference to the population of the units as the criterion for purposes of ratification by the Legislatures of the units. It provided that the ratification

should be by Legislatures of not less than one-half of the then Provinces and the Legislatures of not less than one-third of the then Indian States. The article extended the constituent power of the units to the method of choosing the Governor also. In other words, according to draft article 304, the State Legislature was competent to propose amendments in relation to two matters, namely, (1) method of choosing the Governor and (2) number of Houses of the State Legislature.

By the time the Constituent Assembly took up the provision for consideration, the Indian States had been integrated into the administrative structure of the country and they were for all practical purposes placed on the same footing as the Provinces. It had earlier been decided that the Governor should be appointed by the President and there was no question of the Governor being elected either directly or indirectly. The provision regarding abolition or creation of second Chambers in States had been taken over to the Chapter dealing with State Legislatures. In view of these developments, Dr. Ambedkar moved a re-draft of the article on the 17th September 1949. Article 368 is almost identical with this re-draft.

Thiru Brajeshwar Prasad wanted that the ratification by the States should be by a referendum to the entire electorate. Thiru Mahavir Tyagi objected to the proviso of two-thirds of the members present and voting. After the reply of Dr. Ambedkar, the article was adopted.

For the discussions in the Constituent Assembly referred to in this Appendix *see* page 1039, CAD IV and pages 1643, 1646, 1657, 1659-1662 and 1665, CAD IX