CHAPTER XIV

CO-OPERATIVE FEDERALISM

SYNOPSIS

A. FROM COMPETITIVE TO CO-OPERATIVE FEDERALISM

Though there is division of functions between the Centre and the units in a federation, and the respective areas of competence of each is earmarked, yet it would not be correct to assume that the various governments act in water-tight compartments. As these governments act side by side in the same country, inevitably many types of relations arise amongst them and many instrumentalities to promote intergovernmental co-operation come into existence.

In the three older Federations of the U.S.A., Canada and Australia, in the formative stages of development, the dominant operative concept was that of 'competitive federalism' which denoted a spirit of competition and rivalry between the Centre and the States. The formative stages were, therefore, marked by intergovernmental disputes; the units were very conscious of their powers and rights and, thus, resented the growth of the Centre's powers and any encroachment by it on their domain.[1]

With the passage of time, however, the concept of 'competitive federalism' slowly gave way to 'co-operative federalism'. This trend has been promoted by three powerful factors:

1. *Supra*, Ch. XI, Sec. J(ii), under "Intergovernmental Tax Immunities".

(1) the exigencies of war when for national survival, national effort takes precedence over fine points of Centre-State division of powers;

(2) technological advances means making of communication faster;

(3) the emergence of the concept of a social welfare state in response to public demand for various social services involving huge outlays which the governments of the units could not meet by themselves out of their own resources.

The concept of 'co-operative federalism' helps the federal system, with its divided jurisdiction, to act in unison. It minimises friction and promotes co-operation among the various constituent governments of the federal union so that they can pool their resources to achieve certain desired national goals.[2]

It has come to be realised that the various governments in a federation are interdependent and that they should act, not at cross-purposes, but in co-ordination so as to promote and maximise the public welfare. Money has been one of the strongest motive forces in the emergence of this concept. The Centre with its vast financial capacity is always in a position to help the units which always need it to meet the expanding demands on them for social services falling in their legislative sphere, and this brings the two levels of government closer. Thus, in the U.S.A., intergovernmental co-operation has been built mostly around the system of conditional central grants to the States for centrally-sponsored schemes.[3]

In Australia, financial difficulties of the States have led to the establishment not only of the Commonwealth Grants Commission,[4] but also of another unique institution, the Australian Loan Council, which was created in 1927 to co-ordinate the borrowing programmes of the various governments. The Council meets once a year and consists of the Prime Ministers of the Centre and the States. Each State has one vote, but the Centre has two and a casting votes. All loans are arranged by the Centre and then distributed among the various governments in accordance with an agreed formula. This arrangement has reduced competition among the governments for funds and thus loans can now be arranged on more advantageous terms than was possible before. Besides, expedients like conditional grants, loans by the Centre to the States, income-tax sharing between the Centre and the States with an accent on State financial needs, have also come to be adopted to promote inter-governmental co-operation.

Canada has also developed some co-operative techniques, such as Central Grants to the Provinces, delegation of power by the Centre and Provinces simultaneously to some subordinate agencies created by one or the other government,[5] referential legislation, etc.

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2. CORWIN defines co-operative federalism thus: "The States and National Governments are regarded as mutually complementary parts of a single governmental mechanism all the whose powers are intended to realise the current purposes of government according to their applicability to the problems in hand." THE CONST. OF THE U.S.A., SENATE DOC., 14 (1953).

3. *Supra*.

Ch. XI, Sec. M; See *People of the State of New York v. O'Neill*, 359 US 1 (1959) for judicial support to the development of co-operative federalism in the U.S.A.

Also, CLARK, *Joint Activity between Federal and State Officials*, 51 *Pol. Sc. Q*., 230 (1936); FRANKFURTER AND LANDIS, The Compact Clause, 34 *Yale LJ* 685, 688-691.

4. *Supra*, Ch. XI, Sec. L.

5. *Supra*, Ch. XI, Sec. M; Ch. XII, Sec. B(c).

It may be remembered that these three Constitutions were drafted in an era when *laissez faire* was the dominant political philosophy. The process of adjustment from *laissez faire* to the contemporary era of social welfare state could not be consummated without a corresponding adjustment in the constitutional norms as well. The process of constitutional amendment in each of these countries is extremely rigid. Though the courts have helped the process of adjustment by giving an extended significance to the Central powers, yet this by itself could not have sufficed to satisfy the needs of the changing panorama. The concept of 'co-operative federalism' has, therefore, provided the necessary flexibility and resiliency to an otherwise rigid constitutional framework so as to enable it to cope with the newly emerging demands and challenges.[6]

The twentieth century federalism has come to be understood as a dynamic process of co-operation and shared action between the two levels of Government, with increasing inter-dependence and centrist trends. The antiquated concept of dual federalism is nowhere a functional reality in the modern world not even in the so-called classical federal model of the U.S.A.

The framers of the Indian Constitution took due note of the emerging trend of co-operative federalism in the older federations. They realised that governments in a federation were arranged not hierarchically or vertically but horizontally, that no line of command runs from the Centre to the States, and that common policies among the various governments can be promoted not by dictation but by a process of discussion, agreement and compromise.

The States of India have a large field of administration and decision-making and it becomes essential, therefore, to create agencies to co-ordinate intergovernmental action in those fields at least where the repercussions of a State action would not be confined merely to its own boundaries but would be felt outside the State as well, or where national interests demand a uniform approach. Also, when a number of governments with divided jurisdiction function in the same territory, inter-governmental disputes and differences are bound to arise and it is essential that mechanisms be evolved to resolve and reconcile these differences amongst the various governments so that all of them may pool their resources towards the realization of the social and economic objectives for the welfare of the people. Accordingly, the framers incorporated into the Constitution, an infrastructure to promote co-operation and coordination, and minimise tensions, among the various governments. Several features and provisions of the Constitution have been deliberately designed to institutionalise the concept of Centre-State co-operation.

The provisions for enabling Parliament to legislate in the State area on the request of two or more States,[7] the scheme of financial relations between the Centre and the States,[8] grants-in-aid under Art. 282,[9] the scheme of Centre-State administrative relationship along with provision for all-India services,[10] are some of the instruments designed to promote inter-governmental co-operation and introduce the necessary flexibility in an otherwise rigid federal system.

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6. SAWER, MODERN FEDERALISM, 70-8, 92, 100, 102-5, 122-5, 152 (1969).
7. *Supra*, Ch. X, Sec. J(c).
8. *Supra*, Ch. XI, Sec. K.
9. *Supra*, Ch. XI, Sec. M.
10. *Supra*, Ch. XII, Secs. B and G.

In addition, the Constitution provides for the creation of many agencies with the same purpose in view, *e.g.,* Art. 307.[11] But, even outside the Constitution, a number of bodies have been established either by statutes or by administrative decisions with a view to facilitate inter-governmental co-operation. A notable example of Centre-State co-operation is furnished by the fact-situation in the *Jaora Sugar* case where Parliament used its own legislative power to validate the State tax on entry of sugarcane into the premises of sugar mills, which had been declared invalid by the Supreme Court.[12]

Besides the above specific examples of co-operative federalism in India, a few more are discussed below.

B. FULL FAITH AND CREDIT

The several States in the U.S.A., before the creation of the Federation, were sovereign entities and each was thus free to ignore obligations created under the laws, or by the judicial proceedings of the other. It was, therefore, necessary to evolve a mechanism by which rights legally established in one State could be given nation-wide application, and so there is the Full Faith and Credit clause in the U.S. Constitution.[13] On the same model, the Indian Constitution has Art. 261. Since under Art. 245(1),[14] the jurisdiction of each State is confined to its own territory, it could possibly have been argued that the acts and records of one State could not be recognised in another State. Art. 261 removes any such difficulty. Art. 261(1) lays down that "full faith and credit" is to be given throughout the territory of India to 'public acts', records and judicial proceedings of the Union and the States.[15]

Article 261 is prospective and not retrospective. This provision does not apply to decrees passed before the coming into force of the Constitution. The term 'public acts' in this Article refers not only to statutes but to all other executive and legislative acts. The clause, however, does not envisage that a greater effect be given to the public act of one State in another State than it is entitled to in the 'home' State itself. Hence, an *ultra vires* or unconstitutional statute need not be recognised in any other State. Similarly, the issue of a permit to ply a motor vehicle on a public route, which is void on account of the grant being *ultra vires* the grantor, cannot be regarded as 'an act' within the meaning of this clause. The permit never had any value or life as a permit, *i.e.*, it never came into existence, and so need not be recognised in any other State.[16] Art. 261(1) does not bar an inquiry into the jurisdiction of the court by which a judgment was rendered or passed.[17]

According to Art. 261(2), the manner in which, and the conditions under which, the acts, records and proceedings referred to in Art. 261(1) are to be

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11. *Next Chapter*.
12. *Supra*, Ch. XI, Sec. B.
13. Art. IV, Sec. 1; CORWIN, WHAT THE CONST. MEANS TO-DAY, 199 (1973); JACKSON, Full Faith and Credit—Lawyer's Clause of the Const., 45 *Col. LR* 1 (1945). Also, Secs. 118 and 51 (XXV) of the *Australian Const*.
14. *Supra*, X, Sec. A.
15. *S. Mohd. Ibrahim Hadhee v. State of Madras*, 21 STC 378 (1968).
16. *R. Venkitaraman v. Central Road Traffic Board*, AIR 1953 TC 392.
17. *Yousoof v. State of Mysore*, AIR 1969 Mys 203.

proved, and the effect thereof determined shall be 'as provided by law made by Parliament'. Art. 261(2) thus empowers Parliament to lay down by law:

(a) the mode of proof, as well as,

(b) the effect of acts and proceedings of one State in another State.

Under entry 12, List III, 'recognition of laws, public acts and records and judicial proceedings' is a concurrent subject.[18] Therefore, the States are also entitled to legislate on this matter but subject to the exclusive power conferred on Parliament under Art. 261(2).[19]

Under Art. 261(3), a final judgment or order delivered or passed by a civil court in any part of India is capable of execution anywhere within India according to law. This is a constitutional provision which enjoins that a decree shall be executable in any part of the territory of India according to law. The words 'final judgment' in this clause include 'decrees' also. The clause applies to civil and not to criminal courts. A decree passed by a civil court in any other State is executable in any other State 'according to law' and the word 'law' here means 'procedural' law relating to the execution of the decrees, *e.g.,* the law of limitation. It does not refer to the merits of the decision which cannot be re-opened in another court.[20]

The Bombay High Court passed a decree on June 29, 1960. Goa became a part of India and was made a Union Territory in 1962.[21] The Code of Civil Procedure was made applicable to Goa in 1965. The Supreme Court ruled that as the decree was passed by the Bombay High Court after the Constitution came into force, Art. 261(3) would apply to the decree in question. Further, this Article would also apply to Goa because at the time of its execution, Goa had become a part of India. The decree would be executed according to the C.P.C. which became applicable at the time of the execution of the decree.[22]

C. INTER-STATE COUNCIL

Article 263 provides that the President may by order appoint an Inter-State Council if it appears to him that public interest would be served by its establishment. The President may define the organisation, procedure and duties of the Council. Generally, it may be charged with the duty of:

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest;

(c) making recommendations upon any subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

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18. *Supra*, Ch. X, Sec. F.

19. See *The Indian Evidence Act*, Ss. 37, 57 and 81; also, The *Civil Procedure Code*.

20. *Narsing v. Shankar*, AIR 1958 All 775.
Also, *Panna Lal Umediram v. Narhari S. Narvekar*, AIR 1968 Goa 1; *Moloji Nar Singh Rao v. Shankar Saran*, AIR 1962 SC 1737 : (1963) 2 SCR 577; *Narhari v. Pannalal*, AIR 1977 SC 164 : (1976) 3 SCC 203.

21. See, Ch. V; Ch. IX, Sec. A, *supra*, for "Union Territories".

22. *Narhari, ibid*, at 169-170.

It appears from the above that the Council is envisaged to be an advisory body having no authority to give a binding decision. The Council's function to inquire and advise upon Inter-State disputes is complimentary to the Supreme Court's jurisdiction under Art. 131 to decide a legal controversy between the governments.[23]

The Council can deal with any controversy whether legal or not, but its function is advisory unlike that of the Court which gives a binding decision. The Council is envisaged to be a mechanism of intergovernmental consultation. The Supreme Court can decide intergovernmental disputes of a legal nature. But there may arise inter governmental disputes of a non-legal character and the Council can play a role in settling such disputes.

The Council can play a role in promoting vertical (Centre-State) and horizontal (Inter-State) Intergovernmental cooperation and co-ordination.

The Council may be appointed either on a permanent basis or from time to time on an *ad hoc* basis. It is also possible to appoint not only one but any number of such bodies to deal with various matters as Art. 263 is of a general nature. Such a Council could deal with any matter whether of a legal or a non-legal character in which the States themselves or the Centre and the States may be interested. The function of the Council to inquire and advise upon interstate disputes might be regarded as complimentary to Art. 131 under which the Supreme Court can decide a legal controversy among the governments.[24]

The main idea underlying the provision is to enable the creation of a regular and recognised machinery of inter-governmental consultation so that coordination may be maintained amongst the various governments in such matters as agriculture, forestry, irrigation, education, etc.

Not much use has been made of Art. 263 so far and only a few bodies of minor importance have been created under it. The Central Council of Health, created by a Presidential Order under Art. 263, consists of the Central Health Minister as the Chairman, and the State Health Ministers as members. The Council is an advisory body. Its function is to consider and recommend broad lines of policy in regard to all matters concerning health; to make proposals for legislation in this area; to examine the whole field of possible co-operation in regard to inter-State quarantine during festivals and outbreaks of epidemics; to recommend to the Central Government the method of distribution of grants-in-aid for health purposes to the States; to review the work accomplished with the help of these grants, and to establish organisations invested with appropriate functions to maintain and promote co-operation between the Central and State Health Administrations. All questions are decided by a majority of members present at a meeting.

Another similar body is the Central Council of Local Self-Government which consists of the Union Minister of Health as Chairman, and the State Ministers for Local Self-Government as members. It is an advisory body and performs the following duties: to consider and recommend broad lines of policy in regard to matters concerning local self-government; to make proposals for legislation in

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23. *Supra*, Ch. IV, Sec. B.

24. For discussion on Supreme Court's jurisdiction under Art. 131, see, *supra,* Ch. IV, Sec. C(iii)(b).

the area of local self-government; laying down the pattern of development for India as a whole; to examine the whole field of possible co-operation in regard to local self-government matters and to draw up a common programme of action; to recommend to the Central Government allocation of available financial assistance to local bodies including village panchayats, and to review periodically the work accomplished in the area with the Central assistance. It meets once a year and takes decisions by a majority vote.

Under Art. 263, four regional councils have been set up for making recommendations for the better co-ordination of policy and action with respect to sales tax, a State subject.[25] A regional council has been established in each of the four zones—Northern, Eastern, Western and Southern. Each regional council is to consist of the Secretary in charge of sales tax, and the Commissioner of Sales tax in each of the States and Union Territories concerned; the Deputy Secretary to the Government of India in charge of sales tax and the Deputy Secretary to the Government of India, in the Ministry of Home Affairs, in charge of the Union Territories concerned. The Under Secretary to the Government of India, in the Ministry of Finance, in charge of sales tax is to function as the Secretary of each regional council and convene its meetings. All administrative work relating to the regional councils is to be attended to by the Sales-tax Branch of the Ministry of Finance of the Government of India.

A decision taken at a meeting of a council is recommendatory in nature and is to be forwarded to the Governments concerned for implementation. If a recommendation made by a council is not implemented by a State or a Union Territory, and if the council thinks that its non-implementation would adversely affect the interests of any other State or Union Territory, the council may recommend that the matter may be discussed at a meeting of the Ministers in charge of sales tax in the States and the Union Territories comprised in the zone to be presided over by the Union Minister of State in the Ministry of Finance. A council considers matters relating to the levy of sales-tax (including Central sales-tax)[26] in any State or Union Territory in the zone.

A council is to meet at least once in six months. All questions are to be decided by a majority of votes of the members. Joint meetings of two or more regional councils can also be held if necessary. The main purpose in establishing these councils is to secure a measure of uniformity in the rates of sales tax and other matters pertaining thereto in respect of the States in each zone. Sales tax has a very close relationship with, and an indiscriminate exercise of power to levy sales tax may injure, movement of commodities in inter-State trade and commerce and hence the great need for co-ordinating the State sales taxation to the extent possible.[27]

A study team of the Administrative Reforms Commission suggested the establishment of an Inter-State Council under Art. 263 with a view to strengthen co-operation and co-ordination, and evolution of common policies, among the Central and State Governments in many areas where the measures taken by these

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25. *Supra*, Ch. XI, Sec. D.

26. *Supra*, Ch. XI, Sec. D; Ch. XI, Sec. J(i).

27. S.N. JAIN, Freedom of Trade and Commerce, and Restraints on the State Power to Tax Sale in the course of Inter-State Trade and Commerce, 10 *JILI*, 547, 582, (1968).

For the order of the Government of India setting up the councils see *Gazette of India*, Extraordinary, Pt. II, Sec. 3(1), dated Feb. 1, 68, p. 43.

governments from time to time are mutually interactive.[28] The economy of the country being indivisible, it exerts constant pressure towards administrative unity. This process of co-operation among the governments can be strengthened by evolving a proper apparatus for mutual consultation.

Consultation among the Central and State Governments goes on even at present, but most of the time it is carried on through *ad hoc* bodies like the conferences of the Central and State Ministers dealing with various subjects. These conferences meet at irregular intervals, without much preparatory work, and often with a heavy agenda to transact within a short period. Then, there is no instrument to pursue the follow-up action on the decisions taken at these conferences. The study team, therefore, suggested that the present-day numerous *ad hoc* bodies should be replaced by one standing body to which issues of national importance can be referred and which can advise on them authoritatively after taking all aspects of the problem into account. A single body can look at various problems in the perspective of the whole.

The proposed council should consist of the Prime Minister, a few Central Ministers, State Chief Ministers or their nominees, and others who may be co-opted, or invited to its meetings. All issues of national importance in which States are interested can be placed before this forum except the inter-State boundary disputes, and the appointment of federal officers like the State Governors, the Chief Justice of India, the Chief Election Commissioner, etc.

The Commission endorsed the suggestion of establishing the Inter-State Council so that the inter-State or Centre-State differences may be settled by mutual discussion.[29] The Commission did not work out the details of the types of functions which such a council can discharge. It only made a general statement that "the establishment of an Inter-State Council would be conducive to better understanding."

There has been a demand for the setting up of such a council by some State Chief Ministers so that federal problems may be discussed on a formal basis. The Central Government, however, remains cool to the idea and is diffident about the advisability of creating such a body. Presumably, its misgivings are that once such a body is appointed, the States will seek to use it to intrude into those matters which fall within the decision-making area of the Central Cabinet, *e.g.*, appointment of State Governors, application of Art. 356, etc., matters on which Centre-State controversies arise now and then.

Because of its apprehensions that some States may seek to use the council to undermine its position, the Central Government prefers to keep the processes of consultation more or less *ad hoc* and makes use of the provisions of Art. 263 to set up only such bodies as have well-defined and narrow terms of reference. For consultation in regard to economic matters there is the National Development Council. Nevertheless, there appears to be a good case for appointment of a non-political, advisory body under Art. 263 to keep the intergovernmental relationship under constant review, study problems in that area on an objective and dispassionate basis and project solutions of major issues. Being free of politics, its recommendations may receive a greater acceptability.[30]

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28. REPORT OF THE STUDY TEAM, A.R.C., ON CENTRE-STATE RELATIONSHIPS, I, 294-305 (1967).
29. *A.R.C.*, REPORT ON CENTRE-STATE RELATIONSHIPS, 32-35 (1969).
30. Such an attitude is reflected in the Report of the Rajmannar Committee appointed by the Tamil Nadu Government in 1971 to review Centre-State Relationship, *Report*, 24.

A model for the purpose is furnished by the Advisory Commission on Intergovernmental Relations set up in the U.S.A. in 1959 with the following purposes and functions: to bring together representatives of various governments to consider common problems; to provide a forum for discussion of the administration and co-ordination of federal grant programmes requiring intergovernmental co-operation; to give critical attention to controls involved with administration of federal grant programmes; to make available technical assistance to the executive and legislative branches of the federal government in the review of proposed legislation to determine its over-all effect on the federal system; to encourage discussion and study of emerging public problems likely to require inter-governmental co-operation; to recommend within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities and revenues among several levels of government; to recommend methods for co-ordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the governments. The commission functions in an advisory capacity and its main task is to increase the effectiveness of the federal system by debating various alternatives. A similar body to suggest and study various alternative solutions to the issues causing friction in the inter-governmental relationship is called for in India as well.[31]

The Sarkaria Commission has again recommended the setting up of an all-embracing Inter-State Council under Art. 263. Since 1967, parties or coalition of parties other than the one running the Central Government, have come in power in the States. These State Governments of diverse hues have different views on regional and inter-State problems. In such a situation, the setting up of a standing Inter-State Council with a comprehensive charter under Art. 263 has become an imperative necessity. The council is to consist of the Prime Minister as the Chairman, all State Chief Ministers and all Union Cabinet Ministers dealing with subjects of common interest to the Union and the States as members.

The Council is to be a recommendatory body. It should be charged with duties in broad terms embracing the entire gamut of clauses (b) and (c) of Art. 263. The Council should have such investigative, deliberative and recommendatory functions as would fall within the ambit of cls. (b) and (c) of Art. 263.[32]

In 1990, in *Dabur India Ltd. v. State of Uttar Pradesh*,[33] the Supreme Court suggested the setting up of a Council under Art. 263 to discuss and sort out problems of Central-State taxation.

D. ZONAL COUNCILS

In between the Centre and the States, Zonal Councils have been introduced in India by the States Re-organisation Act, 1956. Great heat and passion was generated in the country at the time of re-organisation of the States on the linguistic basis which imperilled the unity of the country. Therefore, Zonal Councils were created as instruments of intergovernmental consultation and co-operation mainly

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31. WRIGHT, Advisory Commission on Intergovernmental Relations, *Public Adm. Review*, 193 (1965).
32. *Report*, 237-241.
33. AIR 1990 SC 1814 : (1990) 4 SCC 113.

in socio-economic fields and also to arrest the growth of controversies and particularistic tendencies among the various States.[34]

There exist the following five Zonal Councils:

(1) Northern—comprising the States of Punjab, Haryana, Himachal Pradesh, Rajasthan, Jammu and Kashmir, and the Union Territories of Delhi and Chandigarh.

(2) Eastern—comprising the States of Bihar, West Bengal, Orissa and Sikkim.

(3) Western—comprising the States of Gujarat, Maharashtra, Goa and the Union Territories of Daman and Diu and Dadra and Nagar Haveli;

(4) Central—comprising the States of Uttar Pradesh and Madhya Pradesh;

(5) Southern—comprising the States of Andhra Pradesh, Tamil Nadu, Karnataka and Kerala and the Union Territory of Pondicherry.

A Zonal Council consists of a Union Minister to be nominated by the Central Government, and the Chief Minister and two other Ministers from each State to be nominated by the State Government. A Union Territory in the Zone has only two members (and not three as in the case of a State) to be nominated by the Central Executive.

The Union Minister is to be the Chairman of the Zonal Council. A Chief Minister of a member-State acts as its Vice-Chairman for a year by rotation. A Zonal Council has the following advisers to assist it in the performance of its duties: a person nominated by the Planning Commission; the Chief Secretary to the Government of each State in the Zone; the Development Commissioner or any other officer nominated by the Government of each State in the Zone. An adviser is entitled to participate without the right of vote in the discussions of the Council.

A Zonal Council meets in each State in the Zone by rotation. All questions at a meeting of the Zonal Council are decided by a majority of the members present. The presiding officer has a casting vote in case of an equality of votes. Proceedings of every meeting of a Zonal Council are to be forwarded to the Central Government and also to each member-State. A Zonal Council may have a secretariat of its own. The office of the Secretary of the Council is to be held by a Chief Secretary of a member-State, by rotation, for a year at a time. The office of the Zonal Council is to be located within a member-State as determined by the Council. The administrative expenses of each Council's office are to be borne by the Central Exchequer.

A Zonal Council has rule-making power conferred on it by various sections of the Act. It may lay down rules of procedure, with the approval of the Central Government, transact business at its meetings. A Zonal Council may discuss any matter in which some State represented in it, or the Union and one or more of such States, have a common interest. It may advise the Centre and the member-States as to the action to be taken on any such matter. More particularly, a Zonal Council may discuss the following matters and make recommendations—(a) a matter of common interest in the field of economic and social planning; (b) a

34. LOK SABHA DEBATES, *December* 23, 1955, Vol. I, 880.

matter concerning water disputes, linguistic minorities or inter-State transport; (c) a matter connected with, or arising out of, the re-organisation of the States under the States Re-organisation Act.

Joint meetings of several Zonal Councils may be held to discuss matters of common interest to the States included therein. The Central Government may make rules for regulating the procedure at joint meetings of the Zonal Councils.

Adequate provisions have been made for providing a liaison between the Centre and the Zonal Councils. The techniques adopted with this end in view are: (1) appointment of a Central Minister as the Chairman of the Council; (2) submission of the proceedings of a meeting of a Zonal Council to the Central Government; (3) appointment of the Joint Secretary of a Zonal Council by the Chairman, *i.e.*, the Central Minister; (4) approval of the Central Government being made compulsory for the framing of the rules of procedure by a Zonal Council for its own meetings as well as those of its committees. An important feature of the present-day arrangements is that the Central Home Minister is the Chairman of all the Five Councils. This helps in fostering a uniformity of approach to common problems on the Central-Zonal and inter-Zonal basis.

Each State included in a Zonal Council enjoys a complete equality of status, as is evident from the following provisions: (1) each State has an equality of representation in the Council; (2) each Chief Minister is to act as the Vice-Chairman of the Council in rotation for a year; (3) meetings of the Council are to be held in each member State by rotation; (4) The Chief Secretary of a member State is to act as the Secretary of the Council in rotation for one year.

A significant point to note is that voting at the Council meetings is held member-wise and not State-wise, *i.e.*, a State does not vote as a unit, but each member from a State has a right to vote. It is thus possible that representatives of a State in the Council may vote differently on a question instead of following a common line. In practice, however, this may not mean much and all members from a State would often vote the same way, because the members are the Ministers, and all Ministers should have a common approach to problems facing their State owing to the principle of collective responsibility of the Cabinet.[35]

A Zonal Council is an advisory body and has no executive or legislative function to discharge. But, perhaps, its advisory character is its strong point for, otherwise, the States might have felt that the Zonal Council was being designed to reduce their autonomy. The way the Zonal Councils have been designed does not derogate from the State autonomy in any manner. It does not impinge on the legislative or executive authority either of the Centre or of the States.

The sole aim of a Zonal Council is to promote interstate co-operation and consultation by bringing together the States in a region so that they may discuss their common problems and take co-operative action to solve them and pool their resources for the common good. The association of a Central Minister with each Council helps in promoting co-operation and consultation between the Centre and the States and evolution of common policies for the common good of the nation as a whole.

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35. *Supra*, Ch. III, Sec. B.

However, in practice, so far the Councils do not have many spectacular achievements to their credit. Nevertheless, they have helped in developing some common approach to some regional problems. For example, the Southern Council has generally agreed on the question of safeguards for linguistic minorities in the States in the Zone. The Northern Council has been devoting its attention to the development of the crucial hilly areas in the region, to introducing uniform rates of sales tax and to promote inter-State trade and commerce within the Zone. The Eastern Zonal Council has agreed to form a common reserve police and set up a standing committee to review implementation of minority safeguards.

These bodies provide forums for development of a community of interests transcending differences and rivalries amongst the neighbouring States, especially when governments of different political complexion are in power in different States. It is perhaps possible to activate these bodies, and use them for promoting much more fruitful regional co-operation and in toning down causes of friction among the States than has been possible so far.

Reference may also be made here to the North-Eastern Council, discussed earlier, which has been set-up by Parliament under the North Eastern Council Act, 1971. This Council consists of Assam, Manipur, Meghalaya Nagaland, Tripura, Arunachal Pradesh and Mizoram. It has its own secretariat. The underlying idea is to promote co-operation among the various units in Eastern India.[36]

The Sarkaria Commission has expressed the view that the Zonal Councils have not been able to fulfil their aims and objections. The Commission has recommended that these Councils should be reactivated. The Commission has suggested that these Councils be appointed under Art. 263 so that they get the status of constitutional bodies functioning in their own right. The meetings of the Zonal Councils should be held in camera and at regular intervals, in any case not less twice a year.[37]

E. RIVER WATER DISPUTES

India has a number of inter-State rivers and river valleys. The Constitution makers anticipated that with the accent on development of irrigation and power resources, some inter-State disputes would arise regarding sharing of river-waters. The waters of an inter-State river pass through several States. Such waters cannot be regarded as belonging to any single riparian State. The waters are in a state of flow and, therefore, no State can claim exclusive ownership of such waters. No State can legislate for the use of such waters since no State can claim legislative power beyond its territory.[38] Accordingly, the Constitution confers legislative power over such rivers to Parliament. The Constitution makes special provisions for creating a suitable machinery for resolving such disputes.

Article 262(1) empowers Parliament to provide by law for adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of any inter-State river or river valley.[39] This provision confers an exclusive leg-

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36. *Supra*, Ch. IX, Sec. C.
37. *Report*, 240-243.
38. In re *Cauvery Water Disputes Tribunal*, AIR 1992 SC 522, 550 : 1993 Supp (1) SCC 96(II); *supra*, Ch. IV, Sec. F(h).
39. See under entry 56, List I, *supra*, Ch. X, Sec. D.

islative power on Parliament to enact a law providing for the adjudication of disputes relating to use, distribution or control of waters of any inter-State river or river valley. The words "use, distribution and control" are of wide import and may include regulation and development of the said water. "The provisions clearly indicate the amplitude of the scope of adjudication was much as it would take within its sweep the determination of the extent, and the manner, of the use of the said waters, and the power to give directions in respect of the same.

Under Art. 262(2), Parliament may also provide that, notwithstanding anything in the Constitution, neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint. Art. 131 provides for the decision of inter-State disputes by the Supreme Court,[40] but Art. 262 provides that the class of disputes mentioned therein may be excluded by Parliament from the purview of the Supreme Court.

The River Boards Act, 1956, enacted by Parliament under entry 56, List I, provides for the establishment of river boards for the purpose of regulation and development of inter-State rivers and river valleys. Water is a State subject.[41] Therefore, the initiative and responsibility for development of inter-State rivers and river-valleys should primarily rest on State Governments. But, in practice, river valley projects were considerably hampered by conflict of interests among the concerned State Governments. The Act was enacted to meet this situation.

A river board may be established by the Central Government for advising the governments interested in relation to matters concerning the regulation or governance of an inter-State river or river valley. A board is appointed, however, only after consulting interested governments regarding the proposal to establish the board, the persons to be appointed as its members and the functions which it may be empowered to discharge. Persons having special knowledge and experience of irrigation, electrical engineering, flood control, navigation, water conservation, soil conservation, administration and finance are to be appointed members of a river board.

The powers and functions of such a board may be: (*a*) to advise the governments interested on any matter concerning the regulation or development of a specified river or river valley; (*b*) to advise them to resolve their conflicts by coordination of their activities; (*c*) to prepare schemes for regulating or developing the inter-State river or river valley; (*d*) to allocate among the governments the costs of executing any such scheme; (*e*) to watch the progress of the measures undertaken by the governments interested; (*f*) any other matter supplementary to the above.

The Inter-State Water Disputes Act, 1956, which has been enacted under Art. 262, provides for adjudication of disputes relating to the use, distribution or control of waters of inter-State rivers and river valleys among the concerned State Governments. When such a dispute arises, a State Government may request the Central Government to refer it to a tribunal for adjudication [S. 3] and if the Central Government is of opinion that it cannot be settled by negotiations, it would constitute a tribunal for the purposes [S. 4]. Thus, S. 4 while vesting

40. *Supra*, Ch. IV, Sec. B.
41. Entry 17, List II, *Supra*, Ch. X, Sec. E.

power in the Central Government for setting up a Tribunal has made it conditional upon the forming of the requisite opinion by the Central Government.

The tribunal is to consist of a chairman and two other members nominated by the Chief Justice of India from amongst those who are Judges of the Supreme Court or the High Courts. The tribunal may appoint two or more assessors to advise it. The tribunal submits its report to the Central Government which on publication becomes binding on the parties concerned. A matter referable to a river board is not to be referred to the tribunal. Notwithstanding anything contained in any other law, neither the Supreme Court nor any other court shall have any jurisdiction in respect of an inter-State water dispute which may be referred to a Tribunal [S. 11]. This provision read with Art. 262 bars the jurisdiction of all courts including the Supreme Court, to entertain adjudication of disputes which are referable to a tribunal under S. 3.

The Act also prohibits a State, within whose limits any works for the conservation, regulation or utilisation of water resources of any inter-State river have been constructed, from levying additional rate or fee in respect of the use of such water by any other State or inhabitants thereof.[42]

A lacuna in the scheme of Inter-State Water Disputes Act is that it lays down no principles or guidelines to be followed by the tribunal. The reason to take these disputes out of the purview of the courts and appoint tribunals to solve them is that rules of law based on the analogy of private proprietary interests in water do not afford a satisfactory basis for settling these disputes where the interests of the public at large in the proper use of water supplies are involved.

In spite of these statutory provisions, several disputes concerning inter-State rivers have remained pending for long among the various States, and surprisingly the machinery provided by these Acts has not been used effectively. The Central Government took the view that it was preferable to decide matters by an amicable settlement among the various Goverments and that arbitration should be invoked only as a last resort. But when this approach did not succeed, the Government of India appointed several tribunals for adjudication of inter-State disputes regarding the sharing of the waters of Krishna, Godavari and Narmada Rivers.[43]

The Centre has recently created two more bodies to promote river water development. The National Water Development Agency is a non-statutory body with all State irrigation ministers as its members. The function of the Agency is to carry out surveys, investigations and studies for the peninsular rivers development component of the national water plan. The Agency is to promote optimum utilisation of the country's water resources. This envisages the use of surplus waters of all rivers in the country. The other body is the Water Resources Development Council with Prime Minister as the chairman and all State Chief Ministers as members. The Agency will submit its reports to the Council for clearance.[44]

In the matter of Cauvery Water Disputes Tribunal[45] constitutes an important judicial pronouncement in the area of Indian Federalism. The matter came before

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42. Also see, Art. 288; *supra*, Ch. X, Secs. E and K; Ch. XI, Sec. D.
43. JAIN & JACOB, Centre-State Relations in Water Resources Development, XII *JILI*, 1 (1970); ILI., *Inter-State Water Disputes in India* (1971).
44. *The Hindu Int'l, December* 25, 1982.
45. AIR 1992 SC 522 : (1993) Supp (1) SCC 96(II).

the Supreme Court for an advisory opinion by way of reference by the President under Art. 143 of the Constitution.[46]

There has been a long standing dispute between the States of Tamil Nadu and Karnataka (Pondicherry as well) for the distribution of waters of the Cauvery River. In 1990, on a writ petition being filed by the Tamil Nadu Ryots Association, the Supreme Court taking into consideration the course of negotiations between the various States, and the length of time which had passed, held that the negotiations between the two States had failed and, therefore, directed the Central Government to constitute a tribunal under S. 4 of the Inter-State Water Disputes Act, 1956.[47]

Accordingly, the Central Government constituted a tribunal, known as the Cauvery Water Disputes Tribunal, and referred the interstate water disputes to it for adjudication. The Tribunal made an interim award as regards distribution of Cauvery waters between the concerned States.

This award was not acceptable to Karnataka. With a view to make it ineffective, Karnataka issued an ordinance (which was later converted into an Act) charging the State Government with the duty to abstract every year such quantity of water as it may deem requisite from Cauvery notwithstanding anything contained in any order or decision of a tribunal. The purpose of the Act was to override the decision of the Tribunal and its implementation. The Act thus sought to defy and nullify the interim order of the Tribunal set up under an Act of Parliament. The Act also had the effect of reserving to Karnataka exclusively the right to appropriate as much water from Cauvery as it deemed necessary pending the final adjudication by the Tribunal.

It was the question of constitutional validity of this Act which was raised before the Supreme Court in the present reference. After referring to entry 56 in the Union List[48] and entry 17 in the State List[49] and several other entries in the three Lists, the Court concluded that no entry in either of the Lists refers specifically to the adjudication of interstate water disputes. Entry 56 speaks of regulation and development of inter-State rivers and river valleys and does not relate to the disputes between the riparian States with regard to the same and adjudication thereof. It is Art. 262 which gives an exclusive power to Parliament to enact a law providing for adjudication of such disputes. The provisions of Art. 262 are of wide amplitude. In the words of the Court:[50]

> "The provisions clearly indicate the amplitude of the scope of adjudication inasmuch as it would take within its sweep the determination of the extent, and the manner, of the use of the said waters, and the power to give directions in respect of the same."

Article 262 authorises Parliament by law to exclude the jurisdiction of any court including the Supreme Court in respect of any dispute or complaint for the adjudication of which provision is made in such law. The Interstate Water Dis-

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46. See, *supra*, Ch. IV, Sec. F(h).

47. *Tamil Nadu Cauvery Neerppasana Vilaiporulgal V.N. UP Sangam v. Union of India*, AIR 1990 SC 1316 : (1990) 3 SCC 440.
Also see, 1991 AIR SCW 1286.

48. *Supra*, Ch. X, Sec. D.

49. *Supra*, Ch. X, Sec. E.

50. Reference was made to Entry 14, List II and Entry 97, List I: AIR 1992 SC at 547.

putes Act, ruled the Court, has been enacted only under Art. 262 and not under entry 56, List I.

The Court held the Karnataka Act as unconstitutional as it affected the jurisdiction of the Tribunal appointed under the Central Act. By enacting the said Act, Karnataka arrogated to itself the power to decide unilaterally whether the Tribunal had jurisdiction to pass the interim order or not and whether the order was binding on it or not. A Legislature cannot set aside an individual decision *inter partes* and affect their rights and liabilities alone. As the Act in question sought to interfere directly with the Tribunal Order, it was *ultra vires* the Constitution.

The State of Karnataka also presumed that until the Tribunal passes a final order, it could appropriate Cauvery waters to itself without caring for the consequences of such action on the lower riparian States. Karnataka presumed that the lower riparian States had no equitable rights and that it was the sole judge as to the share of other riparian States in the Cauvery waters. "What is further, the State of Karnataka has assumed the role of a judge in its own cause."

The Act also had an extra-territorial operation inasmuch as it interfered with the equitable rights of Tamil Nadu and Pondicherry to the Cauvery waters. The Supreme Court criticised the Karnataka Act as being against the "basic tenets of the rule of law" inasmuch as, in the words of the Court:[51]

> "The State of Karnataka by issuing the ordinance has sought to take law in its own hand and to be above the law. Such an act is an invitation to lawlessness and anarchy, inasmuch as the ordinance is a manifestation of a desire on the part of the State to defy the decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and open doors for each State to act in the way it desires disregarding not only the rights of other States, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the Constitution. If the power of a State to issue such an ordinance is upheld it will lead to the breakdown of the constitutional mechanism and affect the unity and integrity of the nation."

The Court also ruled that the Tribunal could grant interim relief when the question of granting interim relief forms part of the reference. The Tribunal could pass interim orders on such material as according to it was appropriate to the nature of the interim order. On being published by the Central Government under S. 6 of the Act, such an order would become effective and binding on the parties.

There was an agreement between the States of Punjab and Haryana to share the water of River Sutlej. The Punjab Government was to construct the Sutlej-Yamuna Link canal to carry this water to the State of Haryana but it defaulted in doing so. The State of Haryana filed a suit against the State of Punjab under Art. 131[52] of the Constitution to pass a decree directing the Punjab Government to construct the canal. The Punjab Government objected to the suit pleading that it was barred by the Inter-State Water Disputes Act. The Supreme Court negatived the contention arguing that there was no water-dispute between the States as they had already agreed to share the water. The question was regarding the obligation of the Punjab Government to construct the canal as part of the agreement be-

51. AIR 1992 SC at 552.
52. On Art. 131, see, *supra*, Ch. IV. Sec. C(iii)(b).

tween the two States. The Court directed the Punjab Government to fulfil its obligation by completing the canal within a year.[53]

F. OTHER STATUTORY BODIES

A number of statutory bodies have been set up for promoting Centre-State co-operation and co-ordination. A few of these are mentioned here.

(a) UNIVERSITY GRANTS COMMISSION

A body of great importance in the field of university education is the University Grants Commission. According to the Constitution, university education is a concurrent subject, but co-ordination and maintenance of standards in this area is a Central charge,[54] and it is to fulfil this function that Parliament has created the Commission under the University Grants Commission Act, 1956.

The functioning of this body is of great significance in the context of Indian Federalism. The Commission functions in the area of university education and cuts across Central and State lines. It gives grants to the State Universities and thus seeks to influence their working to some extent.

Generally, the Commission is charged with the duty to take all such steps as it may think fit for promotion and co-ordination of university education and for determination and maintenance of standards of teaching, examination and research in the universities. It can enquire into financial needs of the universities, allocate grants to the Central and the State universities, recommend measures to improve university education and advise a university upon action to be taken for this purpose, advise the Central or State Governments on allocation of any grant to universities for any general or specified purpose out of the Central or State funds, advise on estabishing a new university, collect information regarding university education in India and abroad, require a university to furnish it with information regarding its financial position, standards of teaching, examination and courses of study, and perform other functions to advance the cause of higher education.

The funds of the Commission come entirely from the Centre. A distinction is drawn for purposes of grants between the Central and the State universities; for the former, the Commission grants funds both for maintenance and development, but for the latter it can do so only for development, maintenance being a charge on the concerned State Government. The Commission is an autonomous body, and ensures maintenance of minimum standards by each university.

The Commission plays the role of co-ordination and maintenance of standards in the area of university education. Its working is of interest to a student of Indian Federalism because of fragmentation of authority in the Constitution to control university education. It is also an instrument through which the Centre can supplement the financial resources of the State universities.

In the ultimate analysis, the sanction behind the Commission is financial as it can give money to a university, or withhold grants from a defaulting university, and, therefore, the efficacy of the Commission depends on the funds at its dis-

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53. *State of Haryana v. State of Punjab*, AIR 2002 SC 685 : (2002) 2 SCC 507.
54. *Supra*, Ch. X, Sec. G(iii).

posal. Paucity of funds has been a limiting factor on the Commission. Further, its efficacy has also been compromised somewhat by the requirement that it can give funds to the State universities only for development. These universities have, therefore, to look to the State Governments for sizeable funds, and even the Commission's grants can be frustrated by a State not matching the grants which is usually a condition attached by the Commission to its grants to the State universities. The influence of the Commission in the area of university education can be strengthened if these constraints on its functioning are removed.

(b) OTHER BODIES TO CO-ORDINATE HIGHER EDUCATION

Under entry 66, List I, maintenance of standards in institutions of higher education falls exclusively within the preserve of the Central Government and no State can impinge in this area. Besides, the University Grants Commission, mentioned above, a few more bodies have been established by Parliament to maintain standards in higher education.

Parliament has enacted the Indian Medical Council Act, 1956, to set up the Medical Council of India which seeks to maintain standards in the area of medical education.[55]

For maintenance of standards in the area of technical education, Parliament has enacted the All India Council for Technical Education Act, 1987, setting up the All India Council for Technical Education. The Council grants permission to establish new technical institutions and approves starting of new technical institutions and approves starting of new courses or programmes in the country. No State Government can have a policy of its own outside the AICTE Act. If the Council grants permission to set up a technical institution, no state Government can then refuse permission for setting up that institution.[56]

(c) DAMODAR VALLEY CORPORATION

The Damodar Valley Corporation, a joint enterprise of the Centre and the two States of Bihar and West Bengal, has been established under a Central law enacted under Art. 252, to develop the inter-State valley of the Damodar River for irrigation, power and flood control.[57] The corporation consists of three members appointed by the Central Government in consultation with the two State Governments. In discharing its functions, the corporation is to be guided by instructions issued by the Centre on questions of policy. The corporation's annual reports are laid before Parliament and the concerned State Legislatures.

(d) DRUGS CONSULTATIVE COMMITTEE

S. 7 of the Drugs Act, 1940, empowers the Central Government to constitute the Drugs Consultative Committee to advise the Central and State Governments on any matter tending to secure uniformity throughout India in the administration of the Act. The committee consists of two representatives of the Central Government and one representative of each of the State Governments.

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55. *Preeti Srivastava (Dr.) v. State of Madhya Pradesh,* AIR 1999 SC 2894 : (1999) 7 SCC 120; *supra,* Ch. X, Sec. G(iii).

56. *Jaya Gokul Educaional Trust v. Commr. & Secy. to Govt. Higher Education Deptt.,* AIR 2000 SC 1614 : (2000) 5 SCC 231.

57. *Supra,* Ch. X, Sec. J(c).

This is only an illustrative, and not an exhaustive, list of statutory bodies set up to promote inter-governmental co-operation.

G. PLANNING

Since Independence, planning has been a major occupation of the Central and State Governments, and this has made a deep impact on the evolution of the Indian Federalism.

India is economically an under-developed country. With the resources being low, and demands for development being practically insatiable, it becomes incumbent that a planned effort be made to use the available resources to achieve the maximum effect. This, therefore, leads to planning and formulation of five year plans.

Planning makes intergovernmental co-operation very necessary, for in a federal structure, the governments are not arranged hierarchically. There is no line of command, but decisions have to be arrived at through discussion, agreement and compromise amongst the Centre and the States.

Planning was in the air at the time of Constitution-making and some provisions have been incorporated for the purpose in the Constitution. The Indian Constitution lays down no articulate economic philosophy, but its main thrust, as is evidenced by some of the Directive Principles[58], is towards economic democracy, economic empowerment of the weaker sections of the society, and a welfare state without which political democracy does not have much meaning for large segments of the poor people in the country. The Directive Principles obligate the Central and State Governments to play a creative role to promote socio-economic welfare of the people.

In List III, there is entry 20 which runs as: "Economic and Social Planning".[59] Planning being a matter of common interest to the Union and the States, the entry has been appropriately placed in the Concurrent List. The Constitution lays emphasis on planning. For example, the preamble to the Constitution lays emphasis on securing to all citizens "Justice, social, economic and political".[60] Then there are several Directive Principles spelling out directions and principles for the state to secure a social order for the promotion of welfare of the people, such as, Arts. 38 to 42, 43A, 45 to 48A.[61]

One of the Directive Principles lays down that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of national life.

The three Lists have a number of subjects having relevance to planning. Planning being a multi-faceted subject, it spans or touches upon the socio-economic aspects of several matters in the three Lists.[62] A few items like railways, airways, defence industries, posts, telegraph and telephones, atomic energy, industries de-

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58. *Infra*, Chap. XXXIV.
59. *Supra*, Ch. X, Sec. F.
60. *Supra*, Ch. I.
61. See, *infra*, Ch. XXXIV.
62. For these Lists, see, Ch. X, *supra.*

clared to be centrally controlled and a few commodities like tea, coffee and coir, etc. fall in the exclusive Central sphere. Then, there are a number of matters in the exclusive State sphere—public health, relief of the disabled and unemployable education, agriculture, land, etc. A few items fall in the Concurrent List, *e.g.*, labour, social security and social insurance relief, rehabilitation of the displaced persons.

In 1950, the Government of India set up the Planning Commission with the Prime Minister as its Chairman. The following functions have been assigned to the Planning Commission: (1) to make an assessment of material, capital and human resources of the country and investigate the possibilities of augmenting such of these resources as are found to be deficient in relation to the nation's requirements; (2) to formulate a plan for the most effective and balanced utilisation of the country's resources; (3) on a determination of priorities, to define the stages in which the plan should be carried out and propose the allocation of resources for the due completion of each stage; (4) to indicate the factors which are tending to retard economic development and determine the conditions which in view of the current social and political situation, should be established for the successful execution of the plan; (5) to determine the nature of the machinery which will be necessary for securing the successful implementation of each stage of the plan in all its aspects; (6) to appraise from time to time the progress achieved in the execution of each stage of the plan and recommend the adjustments of policy and measures that such appraisal might show to be necessary; and (7) to make such interim and ancillary recommendations as might on a consideration of the prevailing economic conditions, current policies, measures and development programmes, or on an examination of such specific problems as may be referred to it for advice by the Central or State Governments.

The Planning Commission has a Vice-President and a few Central Ministers and a few non-official experts as members. There is no State representative as such on the Commission which can thus be regarded as a purely Central organ. The role of the Commission is advisory. It makes recommendations to the Central Government and the National Development Council. The responsibility for taking final decisions rests with these bodies and the implementation of the plan rests with the Central and the State Governments.

There exists a close co-operation between the Commission and the Central Government because of the fact that the Prime Minister heads both these organs. Other Central Ministers are invited to the Commissioner's meetings from time to time when matters concerning their departments are being discussed. Conversely, members of the Commission may attend meetings of the Central Cabinet when economic matters are discussed there. Important economic proposals of the Central Ministries are considered by the Commission as well before these are discussed by the Cabinet. The Commission prepares the draft five years plans. The Commission is not a statutory body and has been set up by an executive order of the Government of India.

Planning in India has been unified and comprehensive in so far as the plans deal with both the Central and the State subjects. Planning by its very nature postulates a cooperative and coordinated approach between the Centre and the States. The States in India have a large field of decision-making and action, as many matters of socio-economic planning fall within their legislative sphere and

implementation of most of the plan programmes fall within their administrative sphere. It therefore becomes necessary to have some mechanism to give a sense of participation to the States as well in the planning processes. With this end in view, in 1952, the National Development Council (NDC) was established.

NDC consists of the Prime Minister, the State Chief Ministers, representatives of the Union Territories, and members of the Planning Commission. In October, 1967, the membership of the NDC was enlarged by addition of all Ministers of the Union Cabinet and the Chief Ministers of the Union Territories. The functions of the Council are "to strengthen and mobilise the efforts and resources of the nation in support of the plans; to promote common economic policies in all vital spheres and to ensure the balanced and rapid development of all parts of the country."

The Council reviews the working of the plan from time to time, considers important questions of social and economic policy affecting national development, and recommends measures for the achievement of the aims and targets set out in the national plan. At times, other State Ministers whose presence may be considered necessary may also be invited to the Council's meetings. The Council is envisaged to be the supreme body in regard to planning and development; it promotes mutual consultation between the Centre and the States; it plays a significant role in reconciling the views of the Central and State Governments and in securing full co-operation and co-ordination between them in planning matters and thus ensure development of a uniform approach and outlook towards the working of the national plan.

Although the NDC is not a statutory body, its very composition gives it a unique character. It imparts a national character to the entire process of planning. It has assumed, in a way, the role of a super-decision-making body in planning matters in the entire Indian Federation.

Taking an over-all view of planning, undoubtedly, it has to be a cooperative effort between the Centre and the States right from the formulation to the stage of implementation of plans. The implementation of the five year plans is largely the responsibility of the States in regard to matters falling in Lists II and III. As regards the matters falling exclusively in List I, plans may be carried into execution either wholly by the Central agencies or through cooperative action of the Union and the State agencies. Even in regard to the matters falling within the exclusive executive jurisdiction of the Centre, executive functions can be delegated by the Centre to the States via Arts. 258(1) and 258A, discussed earlier.[63]

A very significant feature of the planning processes in India is that the Planning Commission and the National Development Council are based not on any law but on administrative decisions of the Central Government. Though there is in the Concurrent List the entry 'social and economic planning,'[64] no legislation has so far been enacted under it to set up the planning machinery. The Commission has not been given a statutory basis because of the fear that that would reduce flexibility and close relationship between the Commission and the Central Government—the two requisites necessary for successful planning.

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63. *Supra*, Ch. XII, Sec. B.
64. *Supra*, Ch. X, Sec. F.

The Planning Commission, though envisaged to be only advisory, has, in course of time, become much more than that and has been characterised as the 'super economic cabinet of the country'.[65] It exercises a decisive influence on economic decisions taken by the various governments. The Planning Commission is the major agency for achieving economic and social reconstruction of the Indian society and, though not based on any statutory provision, yet profoundly influences inter-governmental relations. The State Governments get Central grants on the Commission's advice.[66] The emergence of the Commission into such a powerful body has been made possible because of the association with it of the Prime Minister and a few Central Ministers.

Because of the centralised planning, the role hitherto played by the Centre in this area has been much more significant than that of the States. Even the National Development Council, which is supposed to be the supreme body in planning matters, has not been able to pull much weight and has invariably followed the lead given by the Central Government and the Planning Commission. The Centre, on the other hand, has been able to exert influence even in the area reserved to the States under the Constitution. In some of the matters falling in this area, *e.g.*, education, health, agriculture, co-operation, housing, etc., there are not only State programmes, but even Centrally-sponsored programmes. Then, the Centre gives large sums of money to the States in the form of grants under Art. 282[67] and loans,[68] and this helps in extending the influence of the Central Government.

The planning mechanism worked for long on an informal basis because of the co-ordinating influence exercised through one and the same political party controlling the Central and State Governments. But, with a change in the political situation, and various political parties assuming power in the States and at the Centre, certain adjustments have taken place in the planning process. The States claim a more active participation in the formulation of the plans and the laying down of priorities for themselves. This has led to some decentralisation of planning in certain areas, and an activisation of the National Development Council so that its discussions become more meaningful. Suggestions have in fact been made to give to the NDC a statutory or a constitutional basis under Art. 263.[69]

The Sarkaria Commission has suggested that the NDC be renamed as National Economic and Development Council (NEDC) and it be constituted under Art. 263. The NEDC will then have adequate flexibility and a measure of authority as it will have the constitutional sanction.

The States want more, and not less, of the Central assistance but with less strings attached. The States' insistence against Centrally-sponsored programmes had led to some shrinkage therein, but the Centre is not willing to shed these programmes completely, for in its view these are so important, like family planning, that if not nourished by it, they would languish and national interests would suffer.

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65. A.K. CHANDRA, INDIAN ADMINISTRATION*;* The Estimates Committee of the Lok Sabha, *XXI* REPORT, 4 (1957-58); *ADMINISTRATIVE REFORMS COMMISSION*, *MACHINERY FOR PLANNING*, 1, 2, (1968).

66. See, *supra*, Ch. XI, Sec. M, under "Specific Purpose Grants".

67. *Ibid.*

68. *Supra*, Ch. XI, Sec. N.

69. *Supra*, Sec. C, this Chapter.

The areas of stresses and strains in the planning process can be identified as follows. Each State demands a big plan for itself; no State is willing to make a tax-effort commensurate with the needs of the envisaged plan and, therefore, each State wants more and more Central assistance; no State is happy that Central assistance should be on a matching basis or tied to particular programmes; each State wants freedom to spend the Central money according to its own needs and ideas; backward States want the Centre to give them much larger funds so that their comparative backwardness may be removed at an early date; on what basis should Central funds be distributed among the States is a question on which States have divergent views, each putting forward a basis which suits it most. On the other hand, complaints are made that the State administration is weak, that there is laxity at the State end in implementing plan programmes and that Central funds are not properly utilised by the States.

Although, there is scope for greater State initiative and participation in the planning processes, it is inevitable, if the country is to make rapid strides, that the various problems are attacked from a national, rather than a regional angle, that there exists close Centre-State co-operation and co-ordination, and that the Centre's role necessarily remains dominant. This is in line with the developments in other federations as has been discussed above. It, however, needs to be emphasized that so far there is no historical parallel in federal planning on such a scale as is being attempted in India. In this respect, India's experiment is unique and it has to adjust its federal system to the demands and pressures of socio-economic planning.[70] The country has embarked on a stupendous programme of economic and social reconstruction with a view to ameliorate the conditions of the masses and create a social order based on social justice. This has neessitated a complete mobilisation of the country's resources. Indian five year plans cover practically all aspects of national life.

CO-ORDINATION BETWEEN FINANCE AND PLANNING COMMISSIONS

A problem arises in the present-day Indian Federalism because of the Planning Commission exercising some overlapping functions in the area of Centre-State fiscal relationship which makes it necessary to find ways to co-ordinate their activities. A substantial amount of money flows from the Centre to the States for execution of the Five Year Plan on the recommendation of the Finance Commission. This is done in the form of grants under Art. 282 and loans under Art. 293. Because of the exigencies of the Five Year Plans, the plan grants under Art. 282 have assumed a dominant position in the scheme of Central-State fiscal relations. This has consequently enhanced the status of the Planning Commission as well.

The Finance Commission is created by the Constitution while the Planning Commission has been established by an executive decision of the Central Government.[71] Nevertheless, since the Planning Commission is a continuous body and deals with large sums of money by way of grants under Art. 282 and loans to the States for planning purposes, while the Finance Commission comes on the scene once in five years, is an *ad hoc* body, and deals only with tax-sharing and

70. On Planning, see, REPORT OF THE SARKARIA COMMISSION, 361-388.
71. *Supra*,Ch. XI, Sec. L.

fiscal need grants,[72] the Planning Commission has come to exert a much more profound impact on the Indian Federalism than the Finance Commission.

The present-day position is that the Finance Commission does not take into account the Centre-State fiscal relationship under the plan. After the Finance Commission has made its recommendations regarding tax-sharing and grants, the Planning Commission takes over, assesses the needs and resources of the States and the Centre and plan programmes and then decides how much money should be given to each State by way of loan and grants under Art. 282.[73] The funds flowing to the States through the Planning Commission are more massive than the grants being given to the States through the Finance Commission. This development has given a new orientation to the constitutional provisions. Whereas the Constitution envisages the Finance Commission as the balance wheel of the Indian Federalism, the emergence of the Planning Commission has somewhat reduced the importance of that body.

A few suggestions have been made from time to time to co-ordinate the roles of the two bodies. It is not feasible to enlarge the functions of the Finance Commission so as to bring within its ambit the plan grants as well, because it will have serious repercussions on the planning processes. Allocation of plan assistance is intimately connected with the formulation of the plan and Planning Commission must take an active part in this process. Then, plan grants to the States are assessed annually while the Finance Commission sits once in five years. If the achievements of the plan targets by the States were to be assessed by the Finance Commission once in five years, that will leave the States free to spend the money as they like for five years and, thus, the whole planning process will go awry. Nor is it possible to entrust the functions of the Finance Commission to the Planning Commission, for the Planning Commission has no statutory or constitutional basis and the Government does not want to formalize this body otherwise the flexibility in planning processes may be lost. Also, its composition has a political element in so far as the Prime Minister is its chairman, and a few Central Ministers are amongst its members, while the Finance Commission is envisaged to be a non-political body, and the States may not like this arrangement.

It is also not feasible to restrict the Finance Commission to tax-sharing, and give the question of fixing the grants—both under the fiscal need and Art. 282—to the Planning Commission, for it is not possible to consider tax-sharing in isolation from fiscal need grants and *vice versa*. The common purpose of both is to close the ordinary revenue gap of the States. On the whole, therefore, it appears that the present arrangement of the Finance Commission not interesting itself in the plan grants and leaving that to the Planning Commission would have to continue.[74] The Sarkaria Commission has also come to the conclusion that the two bodies be maintained as they are. The Commission has observed:[75]

> "We are of the view that the present division of responsibilities between the two bodies, which has come to be evolved with mutual understanding of their

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72. *Ibid.*
73. *Supra*, Ch. XI, Secs. M and N.
74. A.R.C., MACHINERY FOR PLANNING, *op. cit.*, 31; JAIN, JAHRBUCH, note 1, on 823, at pp. 505-510.
75. REPORT, 284.

comparative advantage in dealing with various matters in their respective spheres, should continue".

Some co-ordination between the two Commissions has however been achieved. The five-year period for which the Finance Commission makes its recommendations now coincides with the period of the five-year plan and so it is easy for the Planning Commission to make necessary adjustments in the plan grants in the light of the recommendations of the Finance Commission. Further, a member of the Planning Commission is now nominated to the Finance Commission.

H. CAN THE INDIAN CONSTITUTION BE CHARACTERISED AS FEDERAL?

An academic question raised time and again is whether the Indian Constitution can be characterised as federal. Some scholars hesitate to consider the Indian Constitution as 'truly' federal and they use such epithets for it as '*quasi*-federal', 'unitary with federal features' or 'federal with unitary features.'[76] According to WHEARE, the Constitution of India is '*quasi*-federal,' and not 'strictly federal'.[77] WHEARE'S view is that federalism involves that the general and regional governments should each, within a sphere, be 'co-ordinate' and 'independent.'[78] JENNINGS has characterised it as a 'federation with a strong centralizing tendency.'[79] A few scholars, however, accept it as a federal constitution.[80] Austin describes it as a co-operative federation.[81]

How has the judiciary characterised the Constitution? The attitude of the Supreme Court towards the federal portion of the Constitution has been rather twofold. In contests between a government and an individual (and most of the cases have been of this type), the Court has invariably given an expansive interpretation to the government's legislative power (whether of the Central or the State Government) and has upheld the law.[82] On the other hand, in contests between the Centre and a State, the court has shown its strong predilection for a strong Centre and has, consequently, underplayed the federal aspects of the Constitution.

The Court adopted this strategy to counter the exaggerated claims of the States regarding their position, status and powers *vis-a-vis* the Centre. For instance, in *West Bengal v. India*,[83] the Supreme Court projected the traditional view of federalism and characterised the Indian Constitution as not being "true to any traditional pattern of federation." The Court said so to counter the State claim for sovereignty and applying the doctrine of immunity of instrumentalities to the fullest

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76. *Supra*, Ch 1, Sec. E(l).
Also see, P.K. TRIPATHI, FEDERALISM, THE REALITY AND THE MYTH, (1974) *Jl. Bar Council of India*, 251.
77. WHEARE, FEDERAL GOVERNMENT, 27-8 (1964); 48 All LJ 21.
78. WHEARE, *ibid*., 10, 33. WHEARE, MODERN GOVERNMENT, 18 (1971).
79. SOME CHARACTERISTICS OF THE INDIAN CONSTITUTION, 1.
80. NICHOLAS, The Constitution of India, 23 *Australian LJ* 639; ALEXANDROWICZ, CONSTITUTIONAL DEVELOPMENTS IN INDIA, 155-70; GLEDHILL, REPUBLIC OF INDIA, COMM. SERIES, 74 (1964).
81. THE INDIAN CONSTITUTION—CORNERSTONE OF A NATION, 187.
82. *Supra*, Ch X, Sec. G(i).
83. *Supra*, Ch. XI, Sec. J(ii)(d).

extent in their favour and against the Centre. The Court could have possibly reached the same result, *e.g.*, upholding the validity of the impugned Central Act by taking the prevailing balanced view of federalism as explained below. On the other hand, SUBBA RAO, J., in his bid to bolster the position of the States against the Centre, took recourse to the extreme view of competitive and dual federalism which has long been discarded in the older federations.

In *State of Rajasthan v. Union of India*,[84] BEG, C.J., sought to judge the Indian federalism by the yardstick propounded by WHEARE (which is not generally accepted now) and characterised the Constitution as "more unitary than federal," and having the 'appearances' of a federal structure. He also went on to say:[85]

> "In a sense, therefore, the Indian Union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically co-ordinated, and socially, intellectually, and spiritually uplifted."

These observations were made to justify the exercise of Central powers under Art. 356. And, again, in *Karnataka v. Union of India*,[86] BEG, C.J., said: "Our Constitution has, despite whatever federalism may be found in its structure, so strongly unitary features also in it...." This argument was adopted to counter the State argument that instituting inquiries by the Centre into the conduct of State ministers violated the federal principle.

In *Bommai*,[87] several Judges have characterised the Indian Federalism in different ways. The case concerned the exercise of the power of the Central Government under Art. 356. AHMADI, J., described the Indian Constitution, following K.C. WHEARE, as "*quasi*-federal" because "it is a mixture of the federal and unitary elements, leaning more towards the latter".[88] But other Judges have expressed a more balanced view. Thus, SAWANT, J., has observed:[89]

> "Democracy and federalism are essential features of our Constitution and are part of its basic structure."

JEEVAN REDDY, J., has observed:[90]

> "The fact that under the scheme of our Constitution, greater power is conferred upon the Centre *vis-a-vis* the States do not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the power reserved to the States."

Federalism in India 'is not a matter of administrative convenience, but one of principle'.

Accordingly, as already discussed earlier, in *Bommai*, the Supreme Court has developed a more balanced approach to Art. 356.[91]

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84. *Supra*, Ch. XIII, Secs. C & D.
Also see, Ch. IV, Sec. C(iii)(b).
85. AIR 1977 SC at 1382 : (1997) 3 SCC 592.
86. *Supra*, Ch. XIII, Sec. C.
87. *S.R. Bommai v. Union of India*, AIR 1994 SC 1918 : (1994) 3 SCC 1.
88. *Ibid.*, 1951.
89. *Ibid*, 1977.
90. *Ibid.*, 2053.
91. *Supra*, Ch. XIII, Sec. D.

It is, therefore, worthwhile to consider the nature of the Indian Constitution *vis-a-vis* the other federal constitutions and to see how far the views expressed above are justified.

The U.S. Constitution has been regarded as the epitome of the classical federalism. America started on its federal career with a weak Centre and an accent on States' rights. The reason was that the U.S. Constitution came into being as a result of a voluntary compact among the pre-existing States which conceded rather limited powers to the Centre. Naturally, the Centre born of such a historical process could only get limited powers. A similar process occurred in Australia. Also, the U.S. Constitution was the product of the *laissez faire* era which signified minimum government and maximum private enterprise. In course of time, however, things have changed. The powers of the Centre have expanded phenomenally since 1787 and correspondingly the powers of the States have shrunk. This has been achieved without any explicit amendment of the Constitution but through ingenious legislative devices and judicial tolerance thereof and also through judicial activism.

The courts have interpreted the constitutional provisions liberally in favour of the Centre. The judicial activism in the USA has played a sterling role in the expansion of the Centre's powers over time. The courts through their liberal interpretation of the Constitution have helped in substantial extension of the legislative power into fields which were originally regarded as belonging to the States. The courts have played the significant role as the balance wheel for harmonious adjustment of Centre-State relations.

The Centre's vast financial resources have led to the emergence of the system of grants-in-aid; centripetal forces have been generated and the Centre has become very powerful.[92] Today it can not plausibly be asserted that the States in the U.S.A. are co-ordinate with the Central Government as their position is definitely weaker *vis-a-vis* the Centre. The process has been aided by such factors as tense international situation, wars, vast economic and technological developments, replacement of the *laissez faire* by the social welfare era, etc.

This trend may be strikingly illustrated by referring to an interesting case. As a result of the Depression during the 30's, the U.S. Government desired to introduce a scheme of unemployment compensation. The U.S. Constitution confers no legislative power on the Centre for the purpose. What the Centre, therefore, did was to impose a tax on the pay rolls of the employers, granting a credit up to 90% if a State imposed a similar tax; provision was also made for grants to the States for assisting them to administer the scheme of unemployment compensation. The fund to be collected by the States was to be used for affording unemployment compensation. The Centre, thus, placed enormous economic pressure on the States to adopt the scheme.[93]

The truth is that overtime there has been a continuous expansion of the functional role of the Federal Government. This has completely altered the balance of powers in favour of the Central Government. No longer can it be asserted that the States have a coordinate status with the Centre. It is the Central Government which play a dominant role in the governance of the country so much so that a

92. *Supra*, Ch. XI, Secs. K(b); M.
93. *Steward Machine Co. v. Davis*, 301 US 548 (1937); Also, *Helvering v. Davis*, 301 US 619 (1937).

constitutional scholar has suggested that the "surge" in the USA is towards 'organic federalism' "similar to the surge towards cooperative federalism" of the late 1930s". He characterises 'organic federalism' as "federalism in which the Centre has such extensive powers, and gives such a strong lead to Regions in the most important areas of their individual as well as their cooperative activities, that the political taxonomist may hesitate to describe the result as federal at all."[1]

The Canadian Constitution, to start with, definitely laid an accent on the Centre. In course of time, however, the Privy Council, by its process of interpretation weakened the Centre and exalted the Provinces.[2] This was the result of the assertion of bilinguism and bi-culturism by Quebec—a French majority Province. The Central power to veto provincial legislation has also come to be used sparingly as a result of growth of conventions. On the whole, therefore, the Provinces in Canada have greater freedom of action than the units in other Federations, and this has at times been inconvenient and embarrassing to the Centre, primarily in the area of foreign relations and economic matters.

During the war, however, the Centre acquires vast powers as a result of a liberal interpretation of the general clause. A system of conditional grants-in-aid is now emerging and other expedients of Central-Provincial collaboration are being created. Frequent Central-Provincial Conferences are held to discuss issues pertaining to their relations *inter se*. In the wake of the demise of the *laissez faire* era, the powers of the Central Government have been strengthened. By a constitutional amendment in 1940, the Centre was given power to provide unemployment insurance; and, in 1950, old age pension was made a subject of concurrent jurisdiction.

The Australian Constitution although characterised judicially as a true federation, as in the beginning the Centre's powers were limited and the accent was on the States, has, in course of time, undergone a significant metamorphosis and has moved towards centralization. The Centre has become very powerful as a result of the process of judicial interpretation of its powers,[3] conditional grants-in-aid, fiscal need grants to the deficit States on the recommendation of the Grants Commission,[4] emergence of the financial agreement amongst the Centre and the States under which the Centre has assumed extensive financial powers. Borrowing powers of the States are controlled through the Loan Council.[5]

The enormous Central power was manifested in 1942 when the Centre unilaterally excluded the States, without their consent, from the field of income-tax. Under the Constitution, both can levy the tax.[6] During the war, the Centre desired the States to vacate the field *in lieu* ofgrants. The States did not agree. Thereupon, the Centre passed a number of statutes imposing a very high rate of income-tax (18 s. in the £); Central tax dues were given a priority over State taxes; grants were to be given to those States which desisted from levying the income-tax; and the Centre requisitioned the State income-tax staff. The States found it impossible to levy the tax and so they had to vacate the field.[7] The war-time

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1. SAWER, MODERN FEDERALISM, 125-126.
2. *Supra*, Ch. X, Sec. L.
3. *Ibid.*
4. *Supra*, Ch. XI, Secs. M; K(b).
5. *Supra*, Ch. XI, Sec. N.
6. *Supra*, Ch. XI, Sec. I.
7. *South Australia v. The Commonwealth*, 65 CLR 373 (1942).

scheme has now become a permanent feature in Austraila and has been judicially sanctioned in peace-time.[8] After the demise of *laisser faire era*, the powers of the Centre increased because of the needs to provide social welfare to the people. For example, in the *Pharmaceutical Benefits* case,[9] a Central scheme to provide free pharmaceutical benefits to the people was judicially invalidated. This led to the amendment of the Constitution empowering Parliament to provide a number of social services to the people.

From the above brief description of the developments in the three federations, it becomes clear that the classical concept of a federation envisaging two parallel governments of coordinate jurisdiction, operating in water-tight compartments is nowhere a functional reality now. There is no fixed, static or immutable format of a federal constitution. Each country adapts and moulds the federal idea to its peculiar circumstances, conditions and needs.

It is thus clear from the above discussion that all the older federations have also exhibited centralising and centripetal tendencies and the constituent units do not enjoy a co-equal status with the Centre. In each of these federations, in course of time, the Centre has assumed a very dominant position. During the last several decades, an inevitable trend the world over has been the strengthening of the Central Government.

Undoubtedly the accent of the Indian Constitution is on the Centre which has been made more powerful *vis-a-vis* the States. This has been done for some very good indigenous reasons.

First, there is the historical background. In India, the historical process to create the federal system was different from what happened in the other federations as stated above. For long, before 1935, British-India had been administered on a unitary basis. There existed a unitary system. In 1935, the unitary system was replaced by a federal system. The present federal system was built on the foundation of the 1935 system. It was therefore inevitable that because of its lineage the federal system had a unitary bias.

The Indian federalism was not a result of a compact between several sovereign units but a result of conversion of a unitary system into a federal system. Here the movement has been from unity to union, from unitarism to federalism, unlike other countries where the historical process has been for separate units to come together to form the federal union.[10] In India, it was rather the reverse process, *viz*. to convert a unitary Constitution into a federal Constitution. In *West Bengal v. Union of India*, the Supreme Court took note of this process and rejected the claim of the States that they shared sovereignty with the Centre.[11]

Secondly, the past history of India conclusively establishes that in the absence of a strong Central Government, the country soon disintegrates. This belief was

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8. *Victoria and New South Wales v. The Commonwealth*, 99 CL R 575 (1957).

9. *Attorney General for Victoria v. The Commonwealth*, 71 CLR 223.

10. Until the passage of the Government of India Act, 1935, British India formed a completely unitary government and the Provinces derived their powers from the Central Government. The Act of 1935 then provided for a federal structure, but this part of the Act did never really function. Because of the Second World War, India was governed more as a unitary State rather than a federal State. So far as the pre-Constitution princely States are concerned, the process has been one of integration by agreement: *Supra*, Ch 1.

11. *Supra*, Ch. XI, Sec. J(ii)(d).

strengthened by the recent partition of the country. Therefore, adequate precautions have to be taken against any such future contingency by making the Centre strong. Owing to its vastness of territory and variety of people, India could not be governed efficiently as a unitary state and so a unitary Constitution was out of question. The second best alternative, therefore, before the framers of the Constitution was to adopt the federal principle with a strong Centre. Their approach was not theoretical or that of constitutional puritanism but pragmatic and was conditioned by considerations of unity and welfare of the country as the guiding objectives. India had already undergone one partition on the eve of the Constitution-making and its memories were very fresh in their minds and, therefore, they put a great stress on promoting unity in the country so as to ensure that fissiparous tendencies were kept in check.

In this connection, the following observation of the Sarkaria Commission may be taken note of:[12]

> "The primary lesson of India's history is that, in this vast country, only that polity or system can endure and protect its unity, integrity and sovereignty against external aggression and internal disruption, which ensures a strong Centre with paramount powers, accommodating, at the same time, its traditional diversities. This lesson of history did not go unnoticed by the framers of the Constitution. Being aware that, notwithstanding the common cultural heritage without political cohesion, the country would disintegrate under the pressure of fissiparous forces they accorded the highest priority to the ensurance of the unity and integrity of the country".

Thirdly, being an underdeveloped country, India had to force the pace of economic development in order to compress into decades the progress of the centuries. This could be achieved by mobilising and judiciously using the national resources and this could be done best only under Central direction and leadership.

Lastly, a common feature of all the modern federations is an accent on the Centre. As discussed above, such countries as Australia and America, which started on their federal career with an emphasis on the States, with the Centre having been assigned a limited role, have seen the transformation of the Centre becoming very powerful and the States having relatively gone down. Need has been felt in these federations for a strong Centre so that the defence, and complex socio-economic problems of an industrialised society, may be tackled effectively. Each of the three federations, in varying degrees, has exhibited this tendency, and this provides a justification to make the Centre strong in India.

There has been a continuous expansion of the functional role of the Central Government. Such expansion has completely altered the federal balance of powers in favour of the national government. The framers of the Indian Constitution took due note of these changing concepts and functional realities in other federations. They consciously designed the federal portion of the Indian Constitution with a strong Centre partly because of the experiences of the other federal systems and partly because of the needs of the country, *viz*., security and development.

The framers did not adopt a doctrinaire approach based on the out-moded concept of classical federalism but adopted a functional approach and devised a system in tune with the peculiar needs, traditions and aspirations of the Indian people. Indian federalism is a *sui generis* system. In devising the federal system, the

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12. REPORT, 7.

framers of the Constitution sought to ensure its vitality as well as its adaptability to the changing needs of a dynamic society.

Merely because the Centre enjoys predominance over the States to some extent, the Indian Constitution does not cease to be federal. Federal form of government has no fixed connotation. No two federal constitutions are alike. Each federal government has its own distinct character. Each is the culmination of certain historical processes. One basic feature of each federation however is that there is a division of powers between the Centre and the regional units by the Constitution itself. If the essence of federalism is the existence of units and a Centre, with a division of functions between them by the sanction of the Constitution, then these elements are present in India. In normal times, the States in India have a large amount of autonomy and independence of action. The Indian federal scheme seeks to reconcile the imperatives of a strong Centre with the need for State autonomy.

The States have substantial legislative powers and have control over most of the nation-building activities.[13] They have a full-fledged parliamentary form of government.[14] At no time are they regarded as delegates or agents of the Centre. They subsist not at the sufferance of the Centre but derive their sanction and powers from the same Constitution from which the Centre draws its sanction and powers. In course of time, many conventions have been evolved making the States more autonomous in practice than what it looks to be in theory. An independent judiciary acts as an umpire between the Centre and the States. The process of amending the Constitution is not unilateral so far as the federal portion is concerned, and at least half the States must agree before a proposed amendment can become effective.[15]

Within the sphere assigned to the States by the Constitution, the State Legislatures have plenary power. No fetter or limitation can be read on the legislative power of a State Legislature outside the Constitution.[16] The States have independent and substantial sources of revenue;[17] they have executive power in the exclusive field (List II) and in the Concurrent field.[18] On the whole, the Indian Union is never so closely knit as a unitary polity, nor, it is so loose as a confederation.

What are the provisions in the Constitution which are supposed to go against the principle of federalism? Parliament has power to re-organise the States but here also the States are to be consulted and, further, India being a Union of States, the States have to exist as component units.[19] The existence of several inter-State boundary disputes for long, as between Mysore and Maharashtra, or Punjab and Haryana, prove that Parliament does not act unilaterally in such matters but only after consensus has been reached between the contending parties

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13. *Supra*, Ch. X, Secs. E and F.
14. *Supra*, Chs. VI and VII.
15. *Infra*, Ch. XLI.
16. The State Legislature's competence to legislate on an entry in List II is plenary and it cannot be circumscribed by any assurances given by the government: *Umeg v. Bombay*, AIR 1955 SC 540 : (1955) 2 SCR 164; *State of Kerala v. Gwalior Rayon Silk Mfg. Co*., AIR 1973 SC 2734 : (1973) 2 SCC 713; *supra*, Ch II, Sec. M.
17. *Supra*, Ch, XI, Sec. D.
18. *Supra*, Ch. XII, Sec. A.
19. *Supra*, Ch. V.

themselves. In actual practice, today, the power to re-organise the States is proving to be a source of embarrassment rather than of strength to the Central Government. Then, there is the provision relating to the appointment of the Governor by the Centre. But here a convention has grown to consult the State Chief Minister.[20]

There are the provisions in the Constitution requiring in some cases Central assent to State legislation. But whatever the letter of the Constitution, in practice, by and large, Central assent is accorded to State legislation as a formality and there are not many instances of the Centre vetoing the State legislation. The one conspicuous example of this has been that of the Kerala Education Bill, over which public sentiment in the State ran high, but here also the Centre obtained the advisory opinion of the Supreme Court before remitting it back to the State Legislature for suitable amendments in the light of the Court's opinion.[21]

The Central financial support to the States, as already pointed out, is provided largely under the Constitution and through the Finance Commission, an independent body, and this does not compromise State autonomy.[22] The aid given by the Centre to the States for fulfilment of the plans is on the advice of the Planning Commission, and the National Development Council in which all the States are represented.[23] Further, provision of Federal grants-in-aid to the units is now a common feature of every federation and India is no exception to this trend.[24]

The emergency provisions of the Constitution have at times been held as constituting a major deviation from pure federalism.[25] These provisions are designed for temporary use only; by their very nature they cannot be of normal occurrence. Art. 352 is to be invoked only when its need is demonstrable,[26] and this is much more so now after the 44th Amendment. Further, in an emergency, the behaviour of each federal Constitution is very different from that in peace-time.[27]

Article 356, as has already been discussed,[28] is meant to be used only when constitutional machinery is not functioning properly in a State, and that is an exceptional, not a normal, situation. It may be hoped that with the passage of time people will get the necessary training, outlook and discipline to work democratic institutions, and then the States will have stable Ministries and the provision will fall into desuetude. In *Bommai*,[29] the Supreme Court has now spelled out a few restrictions on the invocation of Art. 356. Further, the composition of the two Houses presently is such, that it is not possible to invoke Art. 356 in relation to a State unless there is national consensus to do so.[30] On the whole, the Central power has weakened in this respect.

Under Art. 252, which introduces a kind of flexibility in the distribution of powers, the States come into picture as the Centre cannot take over the State

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20. *Supra*, Ch. VII, Sec. A(i).
21. AIR 1958 SC 956 : 1959 SCR 995; *Supra*, Ch. IV, Sec. F(c).
22. *Supra*, Ch. XI, Sec. L.
23. *Supra*, Sec. G, this Chapter.
24. *Supra*, Ch, XI, Secs. K(i) and (ii); M.
25. *Supra*, Ch. XIII, Secs. A and B.
26. *Ibid.*
27. *Supra*, Ch. X, Sec. L.
28. *Supra*, Ch. XIII, Sec. D.
29. *Supra*, Ch. XIII, Sec. E(b).
30. *Supra*, Ch. II.

matter without their co-operation and initiative.[31] Only under Art. 249, the Centre acts unilaterally, but it is for an extremely short period and in national interest,[32] and if the theory that the Rajya Sabha represents the States is tenable,[33] then even in this case it can be said that the States' consent is there, if not directly at least indirectly. In any case, so far, this provision has been used very sparingly.

The States Re-organisation Commission has put the matter in the right perspective. "These special provisions", observes the Commission, "however, are primarily remedial in character and are meant to prevent a breakdown in the States and to safeguard the powers of the Union within its own sphere. They do not detract from the fact that under the Constitution the States constitute cornerstones of the political and administrative structure of the country with a real measure of autonomy."[34]

As regards the Centre-State administrative relationship, it has already been pointed out that the Centre depends too much on the States for administrative purposes.[35]

The Constitution introduces mechanism for intergovernmental cooperation. Many more bodies have emerged for this purpose through legislation and administrative orders and practices.

It may also not be out of place to mention here that a good deal of what is explicitly stated in the Indian Constitution in the area of the Centre-State relations is found to be implicit in other federal constitutions. For example, the mechanism of conditional grants mentioned in Art. 282 has come into vogue in all federations although not stated explicitly in the constitutions. In the U.S.A. and Australia, the system is based on the Centre's spending power.[36] The concept of emergency is expressly mentioned in the Indian Constitution in Art. 352. By and large, the same effect is achieved in the USA and Australia under their war power and in Canada under the general power."[37] Art. 355 has its parallel in the USA in Art. IV, Sec. IV.[38]

Thus, considering the whole of the constitutional process—not only the letter of the Constitution but the practices and conventions that have grown thereunder—the Indian Constitution can justifiably be called federal. It is not necessary to use such an inarticulate term as '*quasi*-federal' to characterise it. The term '*quasi*-federal' is extremely vague as it does not denote how powerful the Centre is, how much deviation there is from the *pure* federal model, or what kind of special position a particular *quasi*-federation occupies between a unitary State and a federation proper?

The fundamental principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by means of an ordinary law passed by the Centre, but by something more enduring, *viz*., the Con-

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31. *Supra*, Ch. X, Sec. J(c).
32. *Supra*, Ch. X, Sec. J(a).
33. *Supra*, Ch. II, Sec. B.
34. REPORT, 42.
35. *Supra*, Ch. XII.
36. *Supra*, Ch. XI, Sec. M.
37. *Supra*, Chs. X, Sec. L and XIII, Sec. A.
38. *Supra*, Ch. XIII, Sec. C.

stitution.[39] That is what the Indian Constitution does. The States do not depend upon the Centre, for in normal times, the Centre cannot intrude in their domain. It may be that the Centre has been assigned a larger role than the States, but that by itself does not detract from the federal nature of the Constitution, for it is not the essence of federalism to say that only so much, and no more, power is to be given to the Centre. There is also no immutable line of demarcation in any other federation between the Centre and the States, and the balance of power has always been shifting in favour of the Centre as has been pointed out above.

The concept of 'dual federalism', *viz*., that, in a federation, the general and regional governments are 'co-ordinate and independent' and competitors for power, is based on a reading of the 18th century version of the U.S. Constitution. In its operation today, this Constitution is very different from what it was in the past. Similar is the case in Australia. The truth is that the old orthodox theory of 'dual federalism', as propounded by WHEARE, does not accord with contemporary realities and is no longer tenable or viable.[40] It is extremely difficult to sustain the argument, in the light of the evolution of the so-called true federal constitutions, that federalism must necessarily accord with a fixed, standard or immutable mould.

There is nothing static about the federal concept. Today there is no country which may be said to have 'pure' federalism in the sense of there being a complete dichotomy of functions, or a complete equality of status, between the Centre and the States.[41] In fact, in all federations, as pointed out above, the modern accent is on 'co-operation' between the Centre and the States, rather than on 'independence' of the States.[42] And for successful working of a 'co-operative federalism', it is necessary that the Central Government be in a position to provide leadership to the regional governments, to co-ordinate their activities, to guide them, to help them and, perhaps, on occasions to pressurize them to act in a particular direction if the national interest so demands.

An appraisal of the whole constitutional process including the latest developments in the field of Federal-State financial relations in the U.S.A., Australia and Canada, will make it clear that each of these countries is Centre-oriented today, and the centre of gravity has definitely moved in favour of the Centre. So is the

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39. SAWER, MODERN FEDERALISM, 127, suggests that the most important feature of federalism "is the creation of an area of guaranteed autonomy of each unit of the system. Since the secular trend is towards the increase of authority of the Centre, the question of federalism or no federalism becomes in practice whether the area of autonomy is sufficient to be worth considering and whether the guarantee is sufficiently effective."

40. WHEARE, MODERN GOVERNMENT, 18 (1971).

As SCHWARTZ points out, the doctrine of dual federalism was based upon the notion of two mutually exclusive, reciprocally limiting, fields of power, the governmental occupants of which confronted each other as absolute equals: AMERICAN CONSTITUTIONAL LAW, 42; also, 163, 184-185 (1955).

41. According to FRIEDRICH, federalism should not be seen 'only as a static pattern or design, but defined in 'dynamic' terms. "Federal relations are fluctuating relations in the very nature of things." Federalism is a "process, an evolving pattern of changing relationships rather than a static design regulated by firm and unalterable rules." He maintains that 'dual federalism' is no longer "a realistic description of the actual working of American federalism in which co-operation has replaced competition to a considerable extent." "More and more, the States appear as administrative subdivisions of the nation, government survivals of another day which must be supported by grants-in-aid, supervised and co-ordinated by growing federal bureaucracy."

CARL J. FRIEDRICH, TRENDS OF FEDERALISM IN THEORY AND PRACTICE, 7, 24, 173, (1968).

42. *Supra*, Sec. A, this Chapter.

case in India. Although the accent on the Centre appears to be more pronounced, yet this is mainly because, being the latest member of the federal family, much of what happens elsewhere underneath the surface of the Constitution, has been explicitly incorporated in its fabric. It may, however, be noted that the centralising trends in other federations have not yet ceased or been contained; they continue to operate and are bound to change the constitutional complexion further in course of time.

In India itself, apart from the constitutional provisions the centralising tendencies were also accentuated by the fact that one national party held sway both at the Centre and in the States. But now the State Governments belong to different political parties. The monopoly of power by the Congress Party was broken in 1967 and this has become accentuated since then. This development has thrown an apple of discord in the Central-State relationship.

Within the last few years, a significant change has occurred in the complexion of the Central Government itself. The Central Government to-day is not constituted by a single all India political party; it is now a coalition of several political parties-national as well as regional parties. Accordingly, the policies evolved by the Central Government is the product of the balance of national and regional aspirations and perceptions.

Demands have been raised from time to time for re-ordering of the Indian federalism. This trend became pronounced as various political parties came on the scene and the Centre and the States fell under the sway of several political parties rather than remain under a single party. It is inevitable, therefore, that in course of time, the States gain in stature and improve their bargaining position *vis-a-vis* the Centre.

It is interesting to note in this connection that the Government of Tamil Nadu, dissatisfied with the Constitution, appointed a Committee in 1969, known as the Rajamannar 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 Committee in its report issued in 1971 criticised certain aspects of the Indian Constitution because they were not reconcilable, in the opinion of the Committee, with the standard set by it, *viz*., co-ordinate and dual federalism.[43] But the Committee accepted the position that the power vested in the Centre "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."[44] The Committee suggested some modifications in the Constitutional provisions relating to the distribution of legislative and taxing powers, emergency, etc.

While no harm is done by raising a public debate on the issues involved, and by making necessary adjustments in the Constitution, if found necessary, the point remains that the theoretical, *a priori*, criticism of the Constitution by in-

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43. *Report*, 16.

44. M.C.J. KAGZI, A Critique of the Rajamannar Committee Report, in I.L.I., CONSTITUTIONAL DEVELOPMENTS SINCE INDEPENDENCE, 255 (1975).
Also, M.P. JAIN, *Background Paper, supra*, note 1 on 690.

voking the orthodox concept of 'dual federalism' is not tenable as that concept is no longer valid in modern federalism. Amendments in the Constitution can only be justified if they better serve, and promote, public interest and welfare, and not merely because of any theoretical considerations. It will be necessary to evaluate any proposed amendment from the point of view of its impact on other States as well. The proposals made by the Rajamannar Committee suffer from an extreme over-statement of the case for State autonomy. These proposals did not evoke much public enthusiasm and were endorsed neither by any State Government nor by any All India political party, and the report became a dead letter.

The matrix of Centre-State relationship was also considered by the Administrative Reforms Commission. In its report issued in 1969, the Commission came to the conclusion that "the basic Constitutional fabric of ours is quite sound and must remain intact." Further, in the opinion of the Commission: "No constitutional amendment is necessary for ensuring proper and harmonious relations between the Centre and the States, inasmuch as the provisions of the Constitution governing Centre-State relations are adequate for the purpose of meeting any situation or resolving any problems that may arise in this field." The Commission rightly observed that the Constitution was flexible enough to ensure its successful working irrespective of whichever party may be in power, provided that those who are in power mean to work it and not wreck it.[45] The Government of India agreed with this view of the Commission.[46]

These exercises did not give a quietus to the demand for revising the Central-State relationship. The demand for the same has been made from time to time.[47] The demand became more voiceferous with the emergence of several State governments (Tamil Nadu, Karnataka, Andhra Pradesh, West Bengal and Jammu and Kashmir) belonging to the regional political parties other than the national political party in power at the Centre.

In 1983, in response to an insistent demand to review the Centre-State relations, the Central Government appointed the Sarkaria Commission under the Chairmanship of Justice R.S. SARKARIA, a retired Judge of the Supreme Court, with the following terms of reference: to examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate keeping in view "the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people." Thus, the terms of reference for the Commission specifically laid emphasis that the Commission would in making its recommendations give due regard to the need for maintaining the unity and integrity of the country.

The Commission presented its report in 1988. In its report while the Commission suggested some adjustment in the Centre-State relationship in several ways,

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45. *ARC Rep 7*. Also see, SETALVAD, *Union-State Relations*, 226-236 (1974).
46. THE TIMES OF INDIA, dated April 18, 1975.
47. See, ALICE JACOB, New Pressures on Indian Federalism: Demand for State Autonomy in ILI, INDIAN CONSTITUTION: TRENDS & ISSUES, 370.

it did not make any suggestion for any fundamental change in the structure of the constitutional provisions relating to federalism.

Several problems have become apparent in the practical working of the Indian Federalism over the years. The crucial fact that has emerged is that there is an imbalance between the functions and resources at the State level. Their tax resources have proved to be inelastic while all the money-consuming social services fall within their purview. It is also true that not all States utilize their taxing powers fully because of political pressures. Economic conditions vary from State to State. While the tax raising capacity of the poor States is low, their fiscal needs are very high. There exist vast differences in the scale of social services from State to State. In some States, the expenditure on social services is pitifully low. Then there occur national calamities like famines and floods from time to time taxing the resources of the States. The States are being kept solvent because of the massive transfer of funds from the Centre by way of tax-sharing, grants and loans. The fact also remains that most of the States do not use their financial resources prudently.

Some of the opposition-ruled States want more powers and more autonomy. They want more legislative powers. One drastic suggestion made in this connection is that the Centre should confine itself only to four subjects, *viz*., defence, external affairs, communications and currency, and leave all the rest of the functions (including the residuary) to the States. The States are clamouring for more taxing powers and more central assistance. They want funds to flow to them through the Finance Commission instead of the Planning Commission because the former funds are non-discretionary and untied and the latter funds are discretionary and tied to specific purposes, and some States have a feeling that there is discrimination against them in allocation of such funds. They want a share in the corporation tax which is non-sharable at present; they want full autonomy to use the power to levy sales tax and do not like the scheme of levying additional excise in lieu of sales tax on selected commodities.[48] It is being suggested that the Finance Commission be made a permanent body instead of being appointed, as at present, after five years. Another suggestion is that the role of the Finance Commission be enlarged so as to enable it to deal both with the plan and the non-plan expenditure as well as with total central assistance to the States. It is being argued that the States should get the bulk of funds from the Centre under Art. 275 and that Art. 282 should only play a residuary role unlike the present situation when bulk of the funds for planning purposes pass to the States from the Centre under Art. 282.[49]

Some States want greater economic freedom to develop the States faster and criticise the expansive use made by the Centre of its power under entry 52, List I. They would like the Centre to confine itself only to such industries as may be vital to national development.

The opposition-ruled States have a grievance that the ruling party at the Centre misuses the institution of Governor to further its own political interests in the States.[50] No healthy precedents have been set so far as to how the Governor

48. *Supra*, Ch. XI, Sec. L.
49. *Supra*, Ch. XI, Sec. L.
50. *Supra*, Ch. VII, Secs. A and C.

should conduct himself in different situations.[51] It is being suggested that the position of the Governor should not be different from that of the President.

The States do not like Art. 356 which hangs on their heads as the democle's sword. It is being said that the Central government uses Art. 356 at times to further its own political interests by removing governments of different political complexion from office.[52]

It is also being claimed that over the years, the Planning Commission has just become an appendage of the Central government and to introduce objectivity in planning, it should be made an autonomous body, that the State planning machinery be strengthened and that an inter-State Council consisting of the Prime Minister and the Chief Ministers be established under Art. 263.[53]

It is true that during the last fifty years, strong centralising tendencies emerged in India. To a great extent, this was due to the fact that for long one political party, the Congress Party, was in power at the Centre as well as in all the States. The dominance of one political party for long did inevitably generate centralising trends. But now things have changed. The Congress Party has lost its pre-eminent position; it has lost its monopoly of power. Many political parties having regional, rather than national, perspective have emerged having different political ideologies and some of them have assumed power in some of the States. Further, even the Central Government is composed of a coalition of several political parties. This political development has checked the generation of centripetal forces.

The States to-day are in a much stronger position to assert themselves, to exert pressure on, and to bargain with, the Centre. This is resulting in the emergence of a more balanced federal system in India. The Supreme Court has also helped this process through its decision in *Bommai* by putting some restraints upon the exercise of its power under Art. 356.[54] The Court has declared federalism as the basic feature of the Constitution.[55] Thus, whatever the constitutional provisions, the evolution of the Indian federalism for some time now has been towards a more balanced system with accent on State autonomy.

While there may be a case for some re-adjustment in the Central-State relationship in India, a drastic re-orientation of the Indian federalism is neither feasible, nor desirable, nor called for. There are many practical reasons militating against too much devolution of power on the States, against too much decentralisation.

For one, the economic conditions of all the States is not uniform. Whatever the scheme of division of taxing powers may be, while some States may benefit, others may lose and they will not be able to raise enough resources for themselves. The need for Central help to the States will thus continue. This is the experience of all other federations. This means that the Centre's financial capacity cannot be too much impaired.

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51. See the White Paper on The office of the Governor issued by the Karnataka Government, THE HINDU INT'L, Oct. 1, 83.
52. See, ILI, PRESIDENT'S RULE IN THE STATES, 176-81.
53. *Supra*, Sec. C, this Chapter.
54. For *Bommai*, see, *supra*, Ch. XIII, Sec. E(b) and (c).
55. For discussion on this doctrine, see, Ch. XLI, *infra.*

Two, national calamities will continue to arise from time to time needing massive funds which only the Centre can manage. Three, the administrative infrastructure in the States is weak and is not capable of carrying a greater load unless there is a wholesale effort made to improve it. As already pointed out, the Finance Commission makes provision in its scheme of devolution of Central grants for funds to improve the State administrative machinery. Then, there are the demands of industry, trade and commerce which have national and not local dimensions. State taxing powers such as sales tax, octroi, tax on roads and motor vehicles come in the way of free flow of national trade and traffic and the businessmen constantly make demands for abolition of octroi, integration of sales tax with excise and so on.[56] The States oppose these demands because it will reduce their capacity to raise revenue. Sales tax is the main source of revenue for the States.

It may be of interest to note that over the years, efforts have been made to improve the financial capacity of the states in several ways. First, as already noted, the Finance Commissions have been progressively suggesting larger devolution of Central funds to the States. Two, the courts have progressively interpreted State taxing powers liberally. Three, the Centre has itself by amending the Constitution enhanced the State taxing powers, *e.g.*, in the area of sales tax. Fourthly, devolution of large funds takes place from the Centre to the States through the medium of the Planning Commission.

Many claims and demands have been made from time to time to re-orient Indian Federalism, but most of them have been exaggerated and unrealistic. Many of these demands are politically-motivated rather than based on pragmatic considerations. The Sarkaria Commission has rejected many of the claims made by the States in their favour for reordering the federal system. The inherent soundness of the constitutional provisions concerning Centre-State relations has been vindicated by the Sarkaria Commission's report as no major amendment of any of these provisions has been suggested. Some of the major recommendations of the Commission are:

(1) The Commission has rejected the suggestion that residuary powers be transferred from the Centre to the States.[57]

(2) The Commission has emphasized that the rule of federal supremacy is indispensable for the successful functioning of any federal system. "It is the kingpin of the federal system."[58]

(3) The Commission has rejected the demand for repeal of the most contentious provision in the Constitution, *viz.*, Art. 356. The Commission has however suggested that Art. 356 should be used very sparingly.[59]

(4) The Commission has rejected the demand for the merger of the Finance Commission and the Planning Commission.[60]

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56. See S.N. JAIN & ALICE JACOB, Tax Rental Agreement: Replacement of Sales Tax by Additional Duties of Excise in I.L.I., INDIAN CONSTITUTION: TRENDS & ISSUES, 379 (1978).
57. REPORT, 31.
58. *Ibid.*, 28.
59. *Ibid*, 177.
60. *Ibid*, 284.

(5) The Commission has maintained that it is necessary to retain Art. 365 though it should be used with great caution and invoked only in extreme cases.[61]

(6) The Commission has recommended the creation of the Intergovernmental Council under Art. 263.[62]

The only touch-stone for any re-orientation of Central-State relationship can be the provision of better services to the people, improvement of socio-economic conditions and promotion of national unity, stability and integrity. No *a priori*, dogmatic or doctrinaire approach, no approach based on the old and discarded view of competitive federalism, can serve the purpose in the modern context.

As has already been stated, such a view prevails in no modern federalism now. A strong Centre and strong States are not incompatible with each other. A strong Centre does not imply that the States must necessarily be weak. Both ought to be strong within the constitutional framework. Both are inter-dependent and the Centre could not be strong without strong States and *vice versa*.

There is a lot which the States can do to help themselves and improve their strength and position. They can, for instance, improve their administrative infrastructure and make it more efficient; they can improve their financial position by improving their tax collecting machinery; the condition of such social services as education and health is pitiable in some of the States and they have to make up a lot of leeway in this area; they can improve the working of their electricity boards, road transport services, public enterprises and irrigation projects. The way these bodies are functioning at present in the States does not inspire confidence that things will be much better if more powers were to devolve on the States.[63]

It is very necessary to ensure that neither the federal set-up becomes unitary nor that it becomes too loose and weak affecting the unity of India.

Federalism is not a static but a dynamic concept. It is always in the process of evolution and constant adjustments from time to time in the light of the contemporary needs and the demands being made on it. Constant discussions and negotiations between, the Centre and the States in various fora can help in removing the frictions and difficulties in the area of inter-governmental co-operation and for sorting out these differences with a view to making the Indian Federalism a more robust and viable system so that India may successfully meet the great challenges of defence, external and internal security and socio-economic development.

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61. *Ibid*, 107.
62. *Ibid*, 237-240.
63. See the REPORT of the SEVENTH FINANCE COMMISSION.