

CHAPTER XII

ADMINISTRATIVE RELATIONS

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A. DISTRIBUTION OF EXECUTIVE POWER

In the modern administrative age, administration plays a very significant role by way of enforcing the law and promoting socio-economic welfare of the people. The pattern of administrative relationship between the Centre and the States, therefore, assumes a great significance in a developing country like India.

The Indian Constitution contains more elaborate provisions regarding administrative relations between the Centre and the States than are to be found in any of the three Federations of the U.S.A., Canada and Australia. The Constitution lays down a flexible and permissive, and not a rigid, scheme of allocation of administrative responsibilities between the Centre and the States. The scheme is so designed as to permit all kinds of co-operative administrative arrangements between the two levels of government.

Along with the distribution of legislative and taxing powers,¹ the executive power has also been divided between the Centre and the States. Subject to a few

1. *Supra*, Chs. X and XI.

exceptions, the general principle followed in this connection is that the executive power is coextensive with legislative power. The scope and extent of the executive power of the Centre extends—

(1) to the exercise of rights, authority and jurisdiction available to the Government of India under a treaty or agreement; and

(2) to the matters with respect to which Parliament has power to make laws, subject to this exception, however, that it does not extend in a State with respect to matters regarding which the State Legislature also has power to make laws save when expressly provided in the Constitution or a law made by Parliament [Art. 73].²

This means that the executive power with respect to the matters in the Concurrent List ordinarily remains with the States unless the Constitution or Parliament by law expressly provides otherwise.

The executive power of a State extends to matters with respect to which the State Legislature has power to make laws, provided that in a matter with respect to which both Parliament and State Legislature have power to make laws, the executive power of a State is subject to, and limited by, the executive power expressly conferred by the Constitution, or by any law made by Parliament, upon the Union or its authorities [Art. 162].³ The proviso refers to the Concurrent area.

From the above constitutional provisions, the following propositions emerge:

(1) The executive power of the Centre extends to the whole of India in respect of matters in List I.⁴

(2) However, the Centre is not obligated to administer by itself all matters in its exclusive domain. It can, if it so desires, entrust administrative responsibility in any matter to the States [Art. 154(2)(b)].⁵

(3) A State's executive power extends to its territory in respect of matters in List II.⁶

(4) In respect of matters in which both the Centre and the States have legislative powers (which means List III and List II in cases falling under Arts. 249, 250, 252, 353 and 356), ordinarily, the executive power rests with the States except when either the Constitution, or a law of Parliament, expressly⁷ confers it on the Centre.

In this area, therefore, there are several alternatives available. If the Centre makes no law, the executive power rests with the States. When the Centre makes a law, it can adopt any of the following alternatives regarding executive power under that law—

- (a) it can leave it with the States, or
- (b) it may take over the entire administrative power itself by making an express provision in the law to this effect; or

2. *Supra*, Ch. III.

3. *Supra*, Ch. VII.

4. *Supra*, Ch. X, Sec. D; Ch. XI, Sec. C.

5. *Supra*, Ch. VII, Sec. D(iii).

6. *Supra*, Ch. X, Sec. E; Ch. XI, Sec. D.

7. *Supra*, Ch. X, Sec. J; Sec. I; also, *infra*, Ch. XIII.

- (c) it may create a concurrent area by taking a part of the executive power itself and leaving the rest to the States.

In the Concurrent field, therefore, ordinarily the authority to execute laws rests with the States even when the law is passed by the Centre. In exceptional cases, however, Parliament may prescribe that the execution of a Central law shall be with the Centre alone, or with both the Centre and the States. In this field, even after the Centre assumes executive power under its law, the residuary executive power under the entry may still rest with the States.⁸ In this field, even after the centre assumes executive power under its law, the residuary execution power under the entry may still rest with the States.

All these patterns may be seen working in actual practice. Under the Electricity (Supply) Act, 1956, enacted by Parliament under entry 38, List III,⁹ administrative powers have been left wholly with the State Governments. Under the Industrial Disputes Act, enacted by Parliament under entry 22, List III,¹⁰ administrative powers rest with both the Centre and the States. Under the Essential Commodities Act, enacted by Parliament under entry 33, List III,¹¹ the whole of the power is vested in the Central Government which, however, delegate power to the States to any extent it deems desirable. In actual practice, Centre has delegated a good deal of power under this Act to the States. Under the Forest (Conservation) Act, 1980, the Centre has assumed the entire responsibility for administration of the Act.

While there may be centralization in the sphere of legislation, there is lot of decentralisation in the area of administration. This is because the Centre has not established a separate machinery of its own to execute most of its laws. Only a few subjects in the Union list, such as, defence, foreign affairs, foreign exchange, posts and telegraphs, All India Radio and Television airways, railways, currency, customs, union excises, income-tax, etc. are administered by the Centre directly through its own machinery. Administration of a number of matters in the Union list and most of the matters relating to them, is secured through the machinery of the States.

As has already been pointed out, the executive power of a modern government is not capable of any precise definition. Art. 73 or 162 does not contain any definition as to what the executive function is, or gives an exhaustive enumeration of the activities which could legitimately come within its scope.¹² A government in exercise of its executive powers is charged with the duty and the responsibility of framing policies and carrying on the general administration. So long as it does not go against any constitutional provision or any law, the width and amplitude of its executive power cannot be circumscribed.

If there is no enactment covering a particular aspect, the government can carry on the administration by issuing administrative instructions until the legislature chooses to make a law in that behalf.¹³ Thus, a State Government can establish a

8. *Bishamber Dayal Chandra Mohan v. State of Uttar Pradesh*, AIR 1982 SC 33 : (1982) 1 SCC 39.

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

10. *Ibid.*

11. *Ibid.*

12. *Supra*, Chs. III and VII.

13. *Ram Jawaya, supra*, Ch. III, Sec. D(iii); *Bishamber Dayal Chandra Mohan v. State of Uttar Pradesh, supra*, footnote 8.

bureau of investigation for investigation of cases of tax evasion,¹⁴ or create a new district,¹⁵ or prescribe syllabi or text books for schools,¹⁶ in the exercise of its executive power.

However, a government cannot in exercise of its executive power infringe the rights of the people. If any governmental action is to operate to the prejudice of any person, it must be supported by law.¹⁷

B. CENTRAL-STATE ADMINISTRATIVE CO-ORDINATION

(a) INTER-GOVERNMENTAL DELEGATION OF ADMINISTRATIVE POWER

To mitigate rigidity which might arise from Centre-State division of administrative power, the Indian Constitution makes provisions for inter-governmental delegation of administrative power.

The Indian constitutional system does not envisage that there should be separate, parallel administrative agencies for the Centre and the States for carrying into effect their respective laws. Most Union laws, especially those enacted in the Concurrent List, are executed through the State administrative machinery. Therefore, the Constitution devises certain provisions to obviate the necessity of creating Central administrative machinery for executing every Central law. It is possible to use the state machinery for implementing Central laws. Such an arrangement is not only economical but also promotes cooperative federalism as well as national integration.¹⁸

Inter-governmental delegation may happen either under an agreement between the governments or by legislation. While the Centre can use both the methods to delegate administrative power to the States, a State can use only the first method to delegate administrative power to the Centre.

(b) CENTRE CONFERRING POWERS ON THE STATES UNDER THE CONSTITUTION

Article 258(1) provides that “notwithstanding anything in the Constitution”, the President may, with the consent of the State Government, entrust either conditionally or unconditionally, to the State Government, or its officers, any function in relation to a matter to which the Centre’s executive power extends. This provision authorises entrustment to a State Government, with its consent, of any function of the Central Government.

It is entirely for the Centre to determine if the entrustment to be made to a State should be conditional or unconditional; and if conditional, what conditions are to be imposed on the State concerned. Art. 258(1) provides a tool which, if used liberally, can substantially promote the concept of cooperative federalism.

14. *A.S. Narayana v. State of West Bengal*, 78 C.W.N. 295.

15. *R. Sultan v. State of Andhra Pradesh*, ILR 1970 AP 1075; *Madhusoodanan Nair v. State of Kerala*, 1983 KLT 43.

16. *Ram Jawaya, supra*; *Naraindas Indurkha v. State of Madhya Pradesh*, AIR 1974 SC 1232 : (1974) 4 SCC 788.

17. *State of Madhya Pradesh v. Bharat Singh*, AIR 1967 SC 1170 : (1967) 2 SCR 454; *Satwant Singh v. A.P.O.*, AIR 1967 SC 1836 : (1967) 3 SCR 525; *Bennett Coleman Co. v. Union of India*, AIR 1973 SC 106 : (1972) 2 SCC 788.

18. For Co-operative Federalism, see, *infra*, Ch. XIV.

Usually, while making delegation under Art. 258(1), the Central Government reserves to itself power to issue directions to the State Governments for the exercise of delegated power. It also usually reserves to itself a concurrent power to continue to exercise, along with the State Governments, the functions being delegated to them.

Delegation may be specific or general, to one State or many States, of any function whether within the Union or the Concurrent List. The necessary notification under Art. 258(1) is issued in the name of the President and the consent of the State Governments to the arrangement is necessary.¹⁹

A few important features of Art. 258(1) may be underlined.

(a) Entrustment of a Central function to a State is to take place only with the consent of the State.

(b) The function which may be entrusted should relate to a matter with respect to which the executive power of the Union extends.

(c) This constitutional provision does not authorise the President to delegate those powers and functions with which he is, by the express provisions of the Constitution, invested as the President.

Commenting on Art. 258(1), the Supreme Court has observed in *Jayantilal*²⁰ that “the effect of Art. 258(1) is merely to make a blanket provision enabling the President by notification to exercise the power which the Legislature could exercise by legislation, to entrust functions to the officers to be specified in that behalf by the President and subject to the conditions prescribed thereby.”

This constitutional provision is used extensively to delegate Central functions to the State Governments when a statute confers functions on the Centre, but makes no provision for delegation of the same to the States. But, even when a statute contains a provision authorising the Central Government to delegate its power to the States, Art. 258(1) can still be invoked for the purpose instead of the statutory provision. If, however, the nature of the power involved is such as cannot be delegated under Art. 258(1), then the statutory provision will be necessary for the purpose.

To take a few examples of delegation under Art. 258(1), functions of the Central Government have been entrusted to various State Governments under the Registration of Foreigners Rules, 1939, the Foreigners Act, 1946, and the Foreigners Order, 1948, *vide* a notification issued under Art. 258(1),²¹ subject to two conditions:

(1) in exercising these functions, the State Governments are to comply with such general or special directions as the Central Government may issue from time to time;

(2) notwithstanding the entrustment, the Central Government may itself exercise any of these functions should it deem fit to do so in any case.

19. *A.H. Magermans v. S.K. Ghosh*, AIR 1966 Cal. 552; *Kamal Agency v. State of Maharashtra*, AIR 1971 Bom. 332; *L.B. Paradise Lottery Centre v. State of Andhra Pradesh*, AIR 1975 AP 50.

20. *Jayantilal Amratil v. F.N. Rana*, AIR 1964 SC 648 : (1964) 5 SCR 294.

21. Notification issued under S.O. 590, dated 19-4-1958 of the Ministry of Home Affairs, Govt. of India.

The Government of J&K made an order of deportation on the petitioner under the Foreigners Act, 1946. The petitioner challenged the order on the ground that it could be made only by the Central Government. The Supreme Court rejected the contention saying that the President had under Art. 258(1) lawfully entrusted *inter alia* to the Government of Jammu & Kashmir the function of the Central Government under the Foreigners Act.²²

Under S. 7 of the Explosives Substances Act, 1908, no court can try any person for any offence under the Act without the consent of the Central Government. The Centre has entrusted this function to the State Governments.²³ Atomic Energy is item 6 of List I.²⁴ The Centre has delegated to the State Governments, with their consent, the functions of the Central Government under cls. 4 and 5 of the Atomic Energy (Control of Production and Use) Order, 1953, subject to the usual conditions of the State Governments complying with the Central directions and of the Centre itself being able to exercise its function should it deem fit to do so in a case.

Under S. 10(1) of the Industrial Disputes Act, the Central Government has jurisdiction to refer a labour dispute to a tribunal in respect of certain industries, e.g., mines, major ports, etc., but it can delegate this power to a State Government under Art. 258(1).²⁵ The Minimum Wages Act enacted by Parliament under entries 22, 23, and 24 of the Concurrent List,²⁶ provides for fixation of minimum wages in industries. Certain industries are reserved for the Centre while others fall within the State sphere. Under the Act, the Centre can issue directions to the States as to the execution of the Act in the States. If thought necessary, the Central Government can confer its power on a State Government with respect to any specific industry under Art. 258(1).²⁷ Similarly, power to acquire land under the Land Acquisition Act for the purpose of the Union can be entrusted by the Central Government to a State Government under this constitutional provision.²⁸

The most important case on Art. 258(1), however, is *Jayantilal Amrat Lal v. F.N. Rana*.²⁹ Under the Land Acquisition Act, 1894, the Central Government is competent to acquire land for the purposes of the Union. The Central Government by a notification under Art. 258(1) entrusted this power to the Commissioners in the State of Bombay who were to exercise the power subject to the control of the State Government. Thereafter, the State of Gujarat was carved out of the Bombay State, and a Commissioner in Gujarat, acting under the original entrustment of power, took proceedings to acquire certain land for the Union purposes. S. 87 of the States Re-organisation Act kept alive all laws prevailing in the State before re-organisation. When the Commissioner's power to acquire land was challenged, the Supreme Court by a majority developed the view that the Presidential notification under Art. 258(1) had the force of law and so was kept alive by S. 87. The Commissioner in Gujarat could thus exercise the functions of the

22. *Anwar v. State of Jammu & Kashmir*, AIR 1971 SC 337 : (1971) 3 SCC 104.

23. In re *K.C. Ranga Reddi*, AIR 1962 AP 322; *State of U.P. v. Rampal*, AIR 1965 All. 15; *Supdt. and Remembrancer of Legal Affairs, State of West Bengal v. Nesaruddin Shaikh*, AIR 1963 Cal. 508.

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

25. *Bararee Coke Plant v. Their Workmen*, AIR 1968 Pat. 133.

26. *Supra*.

27. *N.K. Jain v. Labour Commissioner*, AIR 1957 Raj 35.

28. *Zubeda Begum v. Union of India*, AIR 1971 All 452.

29. AIR 1964 SC 648 : (1964) 5 SCR 294.

Central Government under the Land Acquisition Act without a fresh notification having been issued.

Two interesting points mentioned in the Court's opinion may be noted. First, a distinction has been drawn between—

- (i) functions vested in the Union and exercisable by the President on behalf of the Union, and
- (ii) functions entrusted to the President by express provisions of the Constitution.

Only the former functions, but not the latter, can be entrusted to the States under Art. 258(1).

In the latter category fall such functions as the power to promulgate ordinances (Art. 123);³⁰ to suspend the provisions of Arts. 268-279 during an emergency (Art. 354); to declare an emergency under Art. 352; to declare failure of the constitutional machinery of the States under Art. 356; to declare financial emergency under Arts. 360;³¹ to make rules for recruitment to and conditions of service of persons appointed to posts and services in Central services (Art. 309);³² to appoint judges (Arts. 124 and 217);³³ to appoint a commission for Backward Classes (Art. 340);³⁴ to appoint a Special Officer for the 'Scheduled Castes etc. (Art. 338),³⁵ and President's pleasure regarding Union servants (Art. 310).³⁶ These powers cannot be delegated to the States as these are not powers of the Central Government, but are vested in the President, as such, by the Constitution.

Secondly, what can be delegated under Art. 258(1) is a function to which the 'executive' power of the Union extends. A question, therefore, arises whether under Art. 258(1) only an executive function can be entrusted to the States or even what is characterised as 'quasi-judicial' or 'delegated legislation' as well. The balance of judicial opinion so far is that only executive, and not other functions, can be delegated under Art. 258(1).³⁷ The majority in the *Rana* case left the question open as the function involved in the case was only administrative. It could thus mean that powers of delegated legislation, and of a quasi-judicial nature, can be delegated by the Centre to the States only if there is a statutory provision warranting the same and not under Art. 258(1).

Under s. 7 of the Explosive Substances Act, 1908, the consent of the Central Government is requisite for prosecution under the Act. The Central Government entrusted this power to the District Magistrates in the States. The State of Madhya Pradesh issued a notification conferring the powers of DM "under the Criminal Procedure Code or under any other law" on the Additional District Magistrate. The question arose whether the ADM could exercise the power of the DM under s. 7 of the Explosives Act.

30. *Supra*, Ch. III.

31. *Infra*, Ch. XIII.

32. *Infra*, Ch. XVI.

33. *Supra*, Chs. IV and VIII.

34. *Infra*, Ch. XXXV.

35. *Ibid.*

36. *Infra*, Ch. XXXVI.

37. *N.K. Jain v. Labour Commr.*, *supra*; the Minority view in the *Rana case*, *supra*, footnote 29; *Supdt. & Legal Remembrancer v. Nesaruddin*, AIR 1963 Cal 508; *supra*, footnote 23.

The Supreme Court answered in the negative ruling that the power of granting consent under s. 7 rests with the Central Government. The Central Government has delegated the power to the DM. It is therefore not competent for the State Government to delegate to the ADM a power of the Central Government which it has delegated to the DM.³⁸

(c) DELEGATION BY CENTRE TO THE STATES BY LAW

Delegation of power by the Centre to the States through legislation is made possible by Art. 154(2)(b) according to which Parliament is not prevented from conferring by law functions on any authority subordinate to the Governor.³⁹ Also, according to Art. 258(2), a law made by Parliament, even if it relates to a matter in the Union List, with respect to which the State has no power to legislate, may confer power and impose duties, or authorise the conferring of powers and the imposition of duties, upon a State, its officers and authorities. Therefore, a Central law, whether pertaining to a matter in List I or List III, may confer powers and impose duties on the States, their officers and authorities.

Article 258(2) thus covers a situation where under a law made by Parliament, powers can be conferred and duties imposed on a State Government, or its officers even though the State Legislature has no power to make a law with respect to the subject-matter of the Union law.

Unlike Art. 258(1), under Art. 258(2), the conferment is made by Parliament by law and no consent of the State Government is required for the purpose. Whenever, Parliament needs State assistance to enforce a law made by it, necessary provisions are introduced therein for the exercise of the requisite powers and duties by the State administration or, in the alternative, it can empower the Central Government to entrust such powers and duties to the States.

When such a provision is not included in the statute, the Central Government can invoke Art. 258(1) to delegate administrative functions to the States. However, under Art. 258(2), Parliament has to act only within its own competence. Under this clause, Parliament can delegate *quasi*-judicial and *quasi*-legislative powers for effective execution of a Union-law as such powers are regarded as a part of the Central executive power.

Arts. 258(1) and 258(2) largely overlap in so far as matters with respect to which the Central executive functions can be delegated on the State administration. However, the power of Parliament under Art. 258(2) is *sui generis* and uncontrolled by Art. 258(1). Art. 258(2) covers a situation where without the consent of the concerned State, powers can be conferred and duties imposed on it by a Central law enacted by Parliament within the area of its competence, even if the State legislature has no competence to make a law with respect to the subject-matter of the Union law.

The rationale underlying Art. 258 is that it makes it possible to enforce Central laws through the State administrative machinery instead of having two separate and parallel agencies of the Centre and States. Art. 258 provides for two alternative courses for the Centre for the implementation of its laws and policies, *viz.*:

38. *State of Madhya Pradesh v. Bhupendra Singh*, (2000) 1 SCC 555 : AIR 2000 SC 679.

Also see, *Hari Chand Agarwal v. Batala Engineering Co. Ltd.*, AIR 1969 SC 483 : (1969) 2 SCR 201.

39. *Supra*, Ch. VII.

(1) Entrustment of functions by the Central Executive to the State Executive with the consent of the State concerned.

(2) Parliament may confer functions on the State administration by law.

The second course does not need State consent as Parliament has power to determine the appropriate instrumentalities, whether belonging to the Centre or the States, for enforcing the law enacted by it.

Whenever Parliament needs the assistance of the States for enforcing its law, the law itself may provide for the exercise of the necessary powers and duties by the State administration, or, it may provide for delegation of powers by the Centre to the States. However, there may be a law not making any such provision but which may entrust powers and functions to the Centre. There may also be government policies which are not backed by any law. In such cases, the Centre may take recourse to Art. 258(1).

A few examples of conferment of administrative powers by Parliament on the State agencies may be cited here. The Central Sales Tax Act, enacted by Parliament under entry 92A, List I,⁴⁰ the task of assessment and collection of sales tax on inter-State sales confers on the State sales tax authorities. Under MISA, the power of passing an order of preventive detention has been conferred on all district magistrates.⁴¹

Under the Mines and Minerals (Development and Regulation) Act, 1957, the Centre has taken under its control the regulation of mines and development of all minerals and then has left to the States the task of regulating minor minerals by making rules. The rule-making power conferred on the States by the Centre under the Mines and Minerals (Development and Regulation) Act has been held to be valid by the Supreme Court.⁴²

An interesting point to note here is that reading entries 54 in List I, and entry 23 in List II, a mineral not centrally controlled lies within the State purview.⁴³ Therefore, the Centre could have taken under its control only the major minerals and the minor minerals could then have been regulated by the States under their own constitutional powers. But, instead, the States now regulate the minor minerals as delegates of the Centre. Further, an interesting administrative pattern has been created under the Mining Concession Rules, 1949, promulgated under the Mines and Minerals Act. The initial power to grant a mining licence for a major mineral rests with the States, but then an appeal can be taken to the Central Government against an order of the State Government. The State power is thus ultimately subject to the Central power.

Census is another example.⁴⁴ Census takes place once in ten years. It is not practicable for the Centre to create an entirely new machinery for the purpose every ten years and then to disband the same after the census is over. Therefore, the Centre has to depend on the co-operation of the States for purposes of census.

40. *Supra*, Ch. XI, Sec. C.

41. *Infra*, Ch. XXVII, Secs. B, C and D.

42. *D.K. Trivedi & Sons v. State of Gujarat*, (1986) Supp SCC 20 : AIR 1986 SC 1323; *Quarry Owners' Association v. State of Bihar*, (2000) 8 SCC 655 : AIR 2000 SC 2870. Also see, Ch. X, Sec. D and Sec. G(iii)(a).

43. *Supra*, Ch. X, Secs. D, E.

44. *Ibid.*

In some Central statutes, provision exists to enable the Central Government to delegate any of its powers under the Act to the State Governments 'in relation to such matters and subject to such conditions, if any, as may be specified'.⁴⁵

In some cases, powers left with the States are made exercisable by them subject to the concurrence of the Central Government. Such a provision is made when the Central Government feels it necessary to satisfy itself that a State does not use the delegated power in a manner detrimental to the interests of the neighbouring States, or of the country as a whole, or of individuals. Not infrequently, Parliamentary laws confer power on the Central Government to delegate its powers directly on the officers and authorities of the State Governments.

The Essential Commodities Act, 1955, enacted by Parliament under entry 33, List III, confers powers on the Central Government to regulate various aspects of supply, production, storage, etc., of essential commodities (S. 3). The Act provides for an extensive mechanism of delegation of powers from the Centre to the States or their officers/authorities.

The Act authorises the Central Government to confer power on the State Government or its officers and authorities. The States thus act as delegates of the Centre, within the scope of authority conferred on them, and subject to the conditions imposed, and directions given, by the Centre regarding the exercise of delegated power. The Centre can thus delegate legislative, administrative or *quasi-judicial* powers on the State Governments and their agencies and maintain supervisory control over them.⁴⁶

Under the Act, powers are conferred on the States and their officers in several ways, namely:

(1) The Act empowers the Central Government to direct that the power to make an order under S. 3, in relation to such matters and subject to such conditions as may be specified in the order, shall be exercised also by—(a) an officer/authority subordinate to the Union Government, or (b) a State Government or officer/authority subordinate to that Government (S. 5).

A condition usually imposed by the Centre that before making an order, the State Government shall seek the prior consent of the Central Government.

An example of such delegation can be found in the case noted below.⁴⁷ Under S. 5, Essential Commodities Act, the Central Government conferred power under S. 3(1) of the Act on State Government under the following two conditions:

(1) The State Government shall exercise the power subject to any directions issued by the Central Government.

(2) Before issuing any order, the State Government shall obtain prior concurrence of the Central Government.

(3) Another device adopted by the EC Act for delegating power is that an order made by the Central Government under S. 3 may confer powers and impose

45. The Rice-Milling Industry (Regulation) Act, 1958, S. 19; S. 14 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958; The Industries (Development and Regulation) Act, 1951.

46. See, *Afzal Ullah v. State of Uttar Pradesh*, AIR 1964 SC 264 : (1964) 4 SCR 991; *Sujan Singh Matu Ram v. State of Haryana*, AIR 1968 P&H 363; *Foremost Dairies Ltd. v. State*, AIR 1986 Raj 116.

47. *Saurashtra Oil Mills Assn. v. State of Gujarat*, (2002) 3 SCC 202 : AIR 2002 SC 1130.

duties upon the State Government, or any of its officers or authorities. The order may also contain directions as to how the powers are to be exercised and the duties to be discharged (S. 4).

(4) The third pattern of delegation of powers under the Act is that certain sections of the Act straightway empower either a State Government or an officer under it to exercise/perform certain powers/functions.

(5) In other cases, the Central Government delegates power on the State Governments which can further delegate them on their officers and authority.⁴⁸

There may be occasions when the Centre may impose its administrative control over the States even in an area belonging to them. At the time of general re-organisation of States in 1956, S. 115(1) of the States Re-organisation Act, 1956, stipulated that a civil servant in any State would continue to serve in the successor State. Proviso to Sec. 115(7), however, stipulated that the successor State could not vary the conditions of service of such a civil servant to his disadvantage without the previous approval of the Central Government. A kind of protection was thus given to civil servants against being prejudicially affected from State action.

Then, S. 117 of the same Act authorised the Central Government to give directions to a State Government for the purpose of giving effect to these provisions, and the State Government was obligated to comply with such directions.

In a number of cases, rules made by the States adversely affecting service conditions of the civil servants coming to them after re-organisation have been held to be inoperative in the absence of approval of the Central Government.⁴⁹ A State action ignoring the Central directive issued under S. 117 has also been held to be invalid.⁵⁰

An instructive case dealing with the exercise of delegated power is *Mount Corp. v. Director of Industries*.⁵¹ Imports fall within the exclusive Central jurisdiction and are regulated under the Imports and Exports (Control) Act, 1947. The Steel Controller was authorised to issue import licences for stainless steel when the Director of Industries of the State concerned issued an essentiality certificate. The petitioner's application was rejected by the Director of Industries. It transpired that the State had constituted a committee with a Deputy Minister as Chairman and the Director as a member to deal with the distribution of raw materials in the State, and that the application had been rejected by this committee.

Quashing the action of the committee, the High Court held that the power to grant the essentiality certificate had been vested in the Director under the Central Act and orders made thereunder. Instead of leaving him free to exercise this power in his discretion, the State Government sought to usurp the same by appointing a committee. The Court emphasized that when a State official functioned as a delegate under a Central law, he really discharged the functions of the

48. S. 22 of the Supply and Prices of Goods Act, 1950; The Industries (Development and Regulation) Act, 1951.

49. *C.K. Appanna v. State of Mysore*, AIR 1965 Mys. 19; *T.S. Mankad v. State of Gujarat*, AIR 1970 SC 143 : (1969) 2 SCC 120; *Raghvendra Rao v. Dy. Commr.*, AIR 1965 SC 136 : (1964) 7 SCR 549.

50. *Roshanlal v. Union of India*, AIR 1968 Punj 47.

51. AIR 1965 Mys. 144.

Central Government and not of the State Government. The scheme of federation would be a myth if the State Government, by a clever device, could direct the actions of its officers when they discharge statutory powers on behalf of the Central Government. An authority having power under a law must exercise its own individual judgment and not adopt the decision of any other body as his own.

(d) CENTRE TO DEFRAY COST

Under Art. 258(3), where powers and duties are entrusted by the Centre to the States or their officers, the Centre is to recoup the States in respect of any extra costs of administration incurred by the States in connection with those powers and duties. The Centre and the States may agree as to the sums payable in this connection, or, in default of agreement, the amount may be determined by an arbitrator appointed by the Chief Justice of India.

What payment is to be made by the Centre to the State in this connection is entirely a matter between the two governments and no third person can challenge the entrustment or delegation of powers and duties on the ground of absence of such payment. An agreement as to such payments is not a pre-requisite for entrustment of powers by the Centre to the States.⁵²

(e) ENTRUSTMENT OF STATE FUNCTIONS TO THE CENTRE

According to Art. 258A, a State Government may, with the consent of the Government of India, entrust either conditionally or unconditionally to the Central Government or to its officers, functions in relation to any matter to which the executive power of the State extends.

This Article was inserted in the Constitution in 1956 by the Constitution (Seventh Amendment) Act, as a corresponding provision to Art. 258(1). The lack of a provision enabling a State to entrust its functions to the Centre was found to be of practical consequence in connection with the execution of certain development works in the States.

The complicated arrangements existing between the Government of India and the Orissa Government in respect of the Hirakud Dam, a State enterprise, can be seen from the details given in *N.B. Singh v. Duryodhan*.⁵³ The High Court has ruled that the relationship arising by virtue of Art. 258A between the Central and the State Governments is not that of the principal and agent.

C. POWER TO CARRY ON TRADE

Article 298 also has a bearing on the inter-relation of the Central executive power with that of a State and *vice versa*. Under this provision, the executive power of the Union, or of the State, extends to the carrying by it of any "trade or business" whether or not it is related to a matter within its legislative competence and also to hold, acquire or dispose of property and make contracts for any purpose.

This constitutional provision extends executive power of the Centre, or of the State. However, it is subject to one condition. According to provisos (a) and (b),

⁵². *Mulchand v. State of Bihar*, AIR 1974 Pat. 380

⁵³. AIR 1959 Ori. 48, 65.

if an activity falls outside the legislative domain of the government which carries it, then it would be subject to the laws made by the other government having the necessary legislative power. Thus, if the trade or business carried on by the Centre does not fall within the legislative domain of the Centre, then its executive power to carry on that trade or business is subject in each State to the legislation by the concerned State. It is the only case of its kind when the Central executive power has been made subject to the State legislative power. Similarly, if the trade or business carried on by a State does not fall within its legislative domain, then the executive power of the State to carry on that trade or business is subject to legislation by Parliament.

Article 298 enlarges the scope of the executive power of the Centre as well as the States by adding various matters in respect of which these governments may exercise their executive power. It has been held in *Khazan Singh v. State of Uttar Pradesh*⁵⁴ that Art. 298 envisages carrying on of trade and business by a State without any territorial limitations and the restriction, if any, on the executive power of the State is contained in proviso (b) to Art. 298. The Court has further ruled that there is nothing in Art. 298 to say that the trade or business to be carried on by a State must be restricted to the area within its territorial limits. The carrying on of business by one State within the territory of another State does not entail an encroachment upon the executive power of the latter State. If a State has power to carry on trade in its own State it can carry on the same in every part of India.

A State could organize its own lotteries by virtue of its executive power under Art. 298, until law is made by Parliament for the purpose under entry 40, List I.⁵⁵

It may be interesting to note that the Supreme Court has distinguished between Art. 301 and Art. 298. The Court has ruled that the words “trade or business” used in Art. 298 are wider in scope than the words “trade, commerce and intercourse” used in Art. 301.⁵⁶ This means that while a State can conduct lotteries under Art. 298, lotteries being ‘gambling’ and not ‘commerce’ cannot claim the protection of Art. 301.⁵⁷

The words ‘for any purpose’ in Art. 298 indicate that the executive power of the Centre or the States to acquire, hold and dispose of property, or make contracts, is not limited by the division of Centre-State legislative powers. In this way, the width and amplitude of the executive power of the Centre and the States have been expanded. This means that the executive power of the Centre [or the States] is apart from the executive power granted under Art. 73 [or Art. 162].⁵⁸ Under this provision, a State Government has power to reserve a mining area for exploitation in the public sector even when it cannot do so under Art. 162, but this will be subject to the Central legislation.⁵⁹

54. AIR 1974 SC 669 : (1974) 1 SCC 295.

55. *H. Anraj v. State of Maharashtra (I)*, AIR 1984 SC 781 : (1984) 2 SCC 292; for entry 40, List I, see, *supra*, Ch. X, Sec. D.

56. For discussion on Art. 301, see, *infra*, Ch. XV.

57. *B.R. Enterprises v. State of Uttar Pradesh*, AIR 1999 SC 1867 at 1903 : (1999) 9 SCC 700.

For discussion on Art. 301, see, *infra*, Ch. XV.

58. For Art. 73, see, *supra*, Ch. III, For Art. 162, see, *supra*, Ch. VII.

59. *Amritlal v. Union of India*, AIR 1973 Guj. 117; *Lal & Co. v. Union of India*, AIR 1975 Pat. 44.

D. STATES NOT TO IMPEDE THE CENTRE

The Constitution places certain restrictions and obligations on the States in order to ensure that the Centre can exercise its powers unimpeded by them. It is necessary to ensure that no State by its action or inaction interferes with the legislative and administrative policies of the Centre.

Article 256 imposes a general obligation on the States to so exercise their executive power as to ensure compliance with the laws made by Parliament. This lays down the general constitutional duty of every State.

Article 256 further enacts that the executive power of the Centre extends to the giving of such directions to a State as may appear to the Centre to be necessary for the purpose.

It is clear from the phraseology of Art. 256 that the existence of a law made by Parliament is a condition precedent which must be satisfied for the issuance of a direction under it. No direction can be issued under Art. 256 where no enforcement of a law made by Parliament is involved.⁶⁰

Article 256 comes into operation if the Government of India feels that the executive power of the State is being exercised in a manner which may amount to impediment to enforcement of the Central laws.

The State of West Bengal issued a circular to police officers not to intervene in case of *gherao* of industrial establishments by its workers. A writ petition was filed in the Calcutta High Court to challenge the circular. The Court declared that the provisions of Art. 256 were mandatory which must be complied with by the States. Accordingly, the directive issued by the State Government to its officers not to enforce certain sections of the Criminal Procedure Code (a Central law) was struck down as being in violation of Art. 256.⁶¹

The Calcutta High Court observed in this connection:⁶² “The authority and the jurisdiction of the State Government to issue administrative directions are limited, firstly by the Constitution and secondly, by the laws of the land. There is no law which authorises the State Government to issue directives to officers in charge of maintenance of law and order not to enforce the law of the land upon certain conditions being fulfilled and complied with. The provisions in Article 256 of the Constitution.... are mandatory in nature”.

Under Art. 257(1), the executive power of a State is to be so exercised as not to impede or prejudice the exercise of the Centre’s executive power. The Centre can give such directions to a State as may appear to the Central Government to be necessary for that purpose.

The words “for that purpose” in Art. 257(1) indicate that the power of the Centre to give directions is limited to such situations only where some State executive action impedes or prejudices the valid exercise of the Central executive power. This means that the Centre is not entitled to give directions about the exercise of the State executive power in any field reserved for the State executive which does not impede or collide with, or prejudice the exercise of, the Union’s

60. *Sharma Transport v. Govt. of A.P.*, AIR 2002 SC 322 : (2002) 2 SCC 188.

61. *Jay Engineering Works v. State of West Bengal*, AIR 1968 Cal 407.

62. *Ibid*, at 488.

executive power. Such a direction would be invalid. Art. 257(1) primarily emphasizes the principle of federal supremacy.

It is obligatory on the part of the State Government to comply with the directions issued by the Central Government under Arts. 256 and 257(1). The sanction to enforce the directions is enshrined in Art. 356.⁶³

CHANDRACHUD, J., has observed in *A.D.M., Jabalpur v. Shukla*,⁶⁴ as regards Art. 256 that it “does not seem to confer any right on any individual. That Article appears in Part XI which deals with relations between the Union and the States. A failure to comply with Art. 256 may attract serious consequences but no court is likely to entertain a grievance at the instance of a private party that Art. 256 has not been complied with by a State Government.”⁶⁵

This seems to be a casual, not a well considered and definitive, statement. This was the view expressed only by one Judge in a Bench of five Judges and is only an *obiter dicta*. It is not clear how can it be argued that any State action inconsistent with a law is not challengeable in a court. On the other hand, there are High Court cases where persons whose interests are adversely affected by the failure of the State Government to comply with Art. 256, have been permitted to seek judicial relief against the State Government asking it to exercise its executive power to ensure compliance with Art. 256. This is illustrated by *Jay Engineering*.⁶⁶ A circular issued by the West Bengal Government interfering with the implementation of the provisions of the Criminal Procedure Code was quashed by the Calcutta High Court on a writ petition being filed by a company. It was ruled that the provisions of Art. 256 are mandatory in nature and must be complied with by the Council of Ministers. “If the command of the Constitution in Art. 256 of the Constitution is violated and disregarded by the Council of Ministers, by issuing instructions contrary to the mandate of that Article, it must be held that the Council of Ministers had no authority to issue such directives or administrative instructions.” Accordingly, the circular was struck down by the Court.⁶⁷

Under S. 20 of the Urban Land (Ceiling and Regulation) Act, 1976—a Central Act—the State Government is authorised to grant exemption to the vacant land of a person from the operation of the Act. Under S. 36, the Central Government may issue directions to any State Government for effective execution of any of the provisions of the Act. The Central Government issued certain directions to the State Governments as regards exercise of their power under S. 20. Instead of following these directions, the Andhra Pradesh Government decided to reject all applications for grant of exemption under S. 20. The Andhra Pradesh High Court ruled, on a writ petition filed by a cooperative society, that it was obligatory under Arts. 256 and 257 on the part of the State Government to ensure compliance with the law made by Parliament and the directions given by the Central Government for the implementation of the Act. The sanction to enforce these directions is contained in Art. 365.⁶⁸ The court declared the order of the State Gov-

63. See, *K. Co-op. Building Society Ltd. v. State of Andhra Pradesh*, AIR 1985 AP 242.

For discussion on Art. 356, see, *infra*, Ch. XIII.

64. AIR 1976 SC 1207, 1338 : (1976) 2 SCC 521.

For a detailed discussion on this case, see, Ch. XXXIII, Sec. F.

65. For Art. 256, see, Sec. D, *supra*.

66. *Jay Engineering Works v. State of West Bengal*, AIR 1968 Cal 407.

67. *Ibid.*, at 488.

68. See, Sec. E, below.

ernment invalid as it impeded or prejudiced the compliance with the guidelines issued by the Central Government.⁶⁹

E. CENTRE'S DIRECTIVES TO THE STATES

Apart from Arts. 256 and 257(1), a few other constitutional provisions authorise the Centre to issue directives to the States in several matters falling under their purview.

'Communications' is a State subject.⁷⁰ However, under Art. 257(2), the Centre may give directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance. This, however, does not restrict the power of Parliament to declare highways or waterways to be national; nor is the Centre's power restricted with respect to the national highways or waterways nor its power to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.⁷¹

Article 257(3) empowers the Centre to give directions to a State as to the measures to be taken for the protection of the railways within the State. 'Railways' is a Central subject⁷² but 'Police' is a State subject⁷³ and, consequently, the protection of railway property lies within the field of the State Government. It may be that in a particular situation the Centre may desire that the railway property be protected by taking special measures by the State and for that purpose the Centre has power to give directions to the States.

Explaining the rationale of Arts. 257(2) and 257(3)⁷⁴ the Sarkaria Commission has observed:⁷⁵

"Even though clause (1) of Article 257 gives the Union full control over the exercise of the executive power of every State to ensure that it does not impede or prejudice the exercise of the executive power of the Union, the Constitution-makers, nevertheless, considered it necessary to make separate provisions in clauses (2) and (3) regarding means of communication and protection of railways.....Clause (2), is intended to lay stress on the overall importance of well-coordinated effective executive action in regard to means of communications and railways which are so vital for the defence of the country, inter-State social intercourse, travel, trade and commerce, and incidentally are conducive to national integration. Further, as the States have exclusive legislative and executive power in respect of 'land' (vide entry 18 in the 'State List' read with Art. 162), the Constitution-framers appropriately found it necessary in the national interest, for the Union to have control over the State executive to ensure availability of 'land' for purposes of communication and protection of railways."

Provision has been made in Art. 257(4) for the Centre to pay sums to the States in respect of the extra costs incurred by the States due to the directions

69. *Katya Coop. Building Society Ltd. v. State of Andhra Pradesh*, AIR 1985 AP 242; *Mupavarapu Siva Ramakrishnaiah v. State of Andhra Pradesh*, AIR 1985 AP 376.

70. Entry 13, List II, see, *supra*, Ch. X, Sec. E.

71. Entries 4, 23, 24, List I. *Supra*, Ch. X, Sec. D.

72. Entry 22, List I.

73. Entry 2, List II, *Supra*, Ch. X, Sec. E.

74. IX CAD 1186.

75. REPORT, 103.

issued under Cls. (2) and (3) of the Article. This constitutional provision recognises the fact that in complying with any Central directions given to a State under Arts. 257(2) and (3), it may incur extra costs. The Centre is thus placed under an obligation to pay to the State sums to meet the extra costs so incurred by the State.

The Sarkaria Commission has justified the existence of Arts. 256 and 257 in the Constitution in the following words:

“In a two-tier-system of Government, with a single judiciary, where the administration of Union law is largely secured through the machinery of the States, differences are bound to arise between the Union and the States in regard to the manner of implementation of Union laws and the exercise of the Union’s executive powers, specially if they conflict with the exercise of the executive powers of the State. Articles like 256 and 257 are essential to ensure harmonious exercise of the executive power by the Union and by the States, in keeping with the principle of Union supremacy and to enforce this principle, by giving appropriate directions, in the event of irreconcilable differences on vital issues”.⁷⁶

OTHER CONSTITUTIONAL PROVISIONS

Apart from Arts. 256 and 257, there are several other provisions in the Constitution authorising the Union to give directions to the States.

In certain matters pertaining to the Minorities, the Central Government has power to issue directives to the States. Art. 339(2) entitles the Centre to give directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of Scheduled Tribes in the State.⁷⁷

Under Art. 350A, a State is obligated to provide facilities for instruction in the mother-tongue at the primary stage of children belonging to a linguistic minority and the President has been empowered to issue such directions to any State as he considers necessary.⁷⁸

Under Art. 344(6), the President may issue directions in regard to the official language of the Union, and under Art. 347 with regard to the recognition in a State of the language spoken by a substantial proportion of the State population.⁷⁹

Besides, a number of administrative functions have been entrusted to the Centre in the area of minority affairs which are detailed later.⁸⁰

During an emergency under Art. 352, the Centre gets some overriding powers *vis-a-vis* the States. It can give directions to the States as to the way they should exercise their executive power [Art. 353(a)]. During a financial emergency, the Centre can give directions to a State [Art. 360(3)], and, under Art. 356, the Centre can take over a State Government when it cannot be carried on in accordance with the Constitution.⁸¹

Under Art. 371C(2), the President can issue directions to the Governor of Manipur as to the administration of hilly area therein.⁸²

76. *Report*, 106.

77. See, *infra*, Ch. XXXV.

78. See, *infra*, Chs. XVI and XXXV.

79. *Infra*, Ch. XVI.

80. *Infra*, Part V. Ch. XXXV.

81. For discussion on these Emergency Provisions, see, *infra*, Ch. XIII.

82. *Supra*, Ch. IX.

Lastly, there is the all important constitutional provision, Art. 365, which lays down the sanction behind the Central directives to the States. In case of failure of a State to comply with, or give effect to, the Central directions, given under any Constitutional provision, the President may hold that a situation has arisen in which the State Government cannot be carried on in accordance with the provisions of the Constitution. Thereafter, the Centre can take over the administration of the State as provided for in Art. 356.⁸³

The rationale underlying Art. 365 is that the constitutional provisions authorising the Centre to issue directions to the States would be rendered futile if any direction issued thereunder can be ignored or disobeyed by a State with impunity. Any direction issued by the Centre under a constitutional provision is meant to be complied with and not ignored by the concerned State. Without Art. 365, there would have been no sanction to ensure enforcement of Central directions issued to the States under any constitutional provision in exercise of its executive power. However, taking recourse to Art. 365 is a measure of last resort. So far, there has been no occasion for the Centre to invoke Art. 365.

Article 365 can be validly invoked only if the following two conditions are satisfied:

- (1) A direction is issued by the Centre in the valid exercise of its executive power under a constitutional provision,
- (2) The State concerned has not complied with, or given effect to, such direction.

If any of the above conditions is not satisfied, Art. 365 cannot be invoked. Thus, the power conferred by Art. 365 is conditional and not absolute; its exercise may thus become subject to judicial review. If a Central direction does not fulfil the pre-conditions prescribed in the specific constitutional provision under which it is purportedly issued, or has been given for a purpose extraneous to the one for which the power has been conferred by that provision, it would be invalid and open to challenge on that ground in the court.

F. STATUTORY PROVISIONS

Along with the above constitutional provisions, several statutory provisions confer power on the Central Government to give directions to the States. For example, S. 23 of the Supply and Prices of Goods Act, 1950, (enacted under Art. 249),⁸⁴ empowered the Central Government to give directions to any State Government as to the carrying into execution of any of the provisions of the Act, or of any order or direction made thereunder.

Under the Plantation Labour Act, 1951, the executive power is left with the States but the Central Government has power under S. 41 to give directions to a State Government as to the carrying into execution of the provisions of the Act.

Many more such examples can be collected from the statute book. Usually, whenever administrative power is delegated to the States under a Central law, a

^{83.} *Infra*, Ch. XIII, Sec. B.

^{84.} *Supra*, Ch. X, Sec. J.

reservation is made enabling the Centre to give directions to the States as to the carrying into effect the functions so delegated to them.

G. ALL-INDIA SERVICES

Article 312 introduces an important feature into the Constitution, namely, that besides separate services for the Union and the States, the Centre can create certain services common to both.⁸⁵

If the Rajya Sabha declares by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All-India Services (including an all-India Judicial Service) and regulate recruitment and conditions of service for it.⁸⁶ The all-India Judicial Service is not to include any post inferior to that of a district judge.

These services give cohesion to the federal structure and help in achieving greater efficiency in the administration of the Union and the States. The all-India basis of recruitment attracts the best available talent in the country to these services. The two main All-India Services are the Indian Administrative Service and the Indian Police Service. The *raison d'être* of creating All-India Services is that officers on whom the brunt of the responsibility for administration will inevitably fall, may develop a wide and all-India outlook.⁸⁷

With a view to correcting particularistic trends, and also to secure greater inter-State co-ordination for efficient implementation of all-India policies, efforts have been undertaken towards creation of a few more All-India Services, especially for technical departments, for "the Central and State Governments have to work in very close co-operation in executing important development projects, which necessitates that technical personnel should be trained and recruited on a common basis".⁸⁸ Consequently, in 1961, the Chief Ministers' Conference accepted in principle the creation of three new All-India Services in the field of engineering, forestry and medicine and public health. After the adoption of a resolution under Art. 312(1) by the Rajya Sabha, these services were created by amending the All-India Services Act, 1951 in 1963.

The State Governments had also agreed to the creation of two more All-India Services, *viz.*, the Indian Educational Service and the Indian Agricultural Service. The necessary resolution under Art. 312(1) was also adopted by the Rajya Sabha. After the fourth general elections, a few State Governments modified their stand and refused to participate in these two services and, consequently, the matter was deferred.⁸⁹

H. GENERAL OBSERVATIONS

Some of the provisions made in the Constitution are unique insofar as these are not to be found in the Federations of U.S.A., Canada and Australia. The basic

85. *Infra*, Ch. XXXVI.

86. See, *D.S. Garewal v. State of Punjab*, AIR 1959 SC 512 : 1959 Supp (1) SCR 792.

87. STATES REORGANIZATION COMMISSION REPORT, 232 (1955).

88. *Ibid*, 231. Also, A.K. CHANDA, *FEDERALISM IN INDIA*, 106 (1965).

89. ANNUAL REPORT, MINISTRY OF HOME AFFAIRS, 2 (1968-69).

pattern of administration in these countries is that central legislation is by and large implemented through the federal executive. In India, it is not so.

In India, the Constitution is so devised as to leave most of the administration to the States. The Centre directly administers through its own agencies only a few functions in its exclusive List, *e.g.*, defence, foreign affairs, railways, collection of taxes, regulation of foreign trade, foreign exchange and currency, centrally controlled industries, etc. Quite a number of its exclusive functions are administered through the States, *e.g.*, till recently passports were issued by the States, but this task has now been centralised; policing of some of the international borders still rests with the States though the Centre has now created the Border Security Force for the purpose.

Many functions in the Central List are delegated to the States under Art. 258(1), or under legislation, and in some areas co-operation of State agencies is sought informally. On the other hand, the States have responsibility to administer all the functions falling in List II. In addition, the administration of functions in the Concurrent List also belongs to them unless Parliament by passing a law confers power of administration in a particular matter on the Centre. Further, the States also administer such functions in List I as are delegated to them.

Even when the Centre assumes power under a law enacted by it in the Concurrent area, it delegates most of these on the States. Thus, under the Essential Commodities Act, 1955, while the power to regulate essential commodities has been centralised, it exercises the power through its own agencies only in respect of a few commodities like iron and steel, jute, etc., and leaves quite a big slice of administration under the Act to the States subject to its over-all control. The Constitution thus envisages a good deal of administrative cooperation between the Centre and the States.

A mosaic of Central-State relationship has thus come into existence in the country. The law enforcement machinery, like the police, etc., wholly belongs to the States and, therefore, even if a Central law makes an activity penal, the efficacy of the law, by and large, depends almost wholly on the zeal with which the States seek to enforce it. It is not uncommon to see that many Central laws are diluted and remain mere paper legislation because of weak and indifferent administration by the States.

Most of the administration at the grass-roots vests in the States. The States carry out their own exclusive functions along with a number of functions as delegates of the Central Government.

A large sector of five-year plans falls to the States for implementation because many nation-building activities fall within their legislative purview. The plans deal with many matters in the State and Concurrent Lists and, therefore, the successful implementation of the plans, and of many national policies of development, depends mostly on State initiative and enterprise and on the effectiveness with which the States administer them.

The modern era has been characterised as the administrative age in which much depends on an effective administration. It is much more so in India where successful planning depends on sustained administrative effort, initiative and enterprise as plan programmes are to be completed within a fixed time.

Opinions have been expressed from time to time that too much dependence by the Centre on the States for purposes of administration is the weak link of the present-day Indian Federalism. It is well known that, on the whole, State administration is rather weak and this means that the administration of plan projects and other Central programmes and functions is not as vigorous as it should be.

Appleby has pointedly commented on this aspect of the matter thus: "The Nation is crucially dependent on the States for actual achievement of the chief programmatic objectives of the Nation". "Because of the Constitutional arrangements, in many fields of pre-eminently national importance, the Centre's hopes for success are dependent on its capacity for influencing and co-ordinating administration actually in the States' systems and not on directing or controlling the States or holding them strictly and specifically accountable. The Centre holds conferences, makes studies and plans, issues pronouncements, and is fundamentally lacking in administrative authority," and that "the new national government of India is given less basic resource in power than any other large and important nation, while at the same time having rather more sense of need and determination to establish programmes dealing with matters important to the national interest." The Centre does not have effective power of enforcing on the States any co-ordinative decision when there is, instead, the diluted and incomplete task of co-ordination not involving exercise of a real, formal and continuing power of control.

Appleby went on to say further: "Even when the Centre has power to issue directives to the States, matters do not improve very much for, in the very nature of things, such a power cannot be exercised too frequently. Even in the area of conditional grants-in-aid made under Art. 282, no effective mechanism to supervise use of funds by the States has been worked out so far."⁹⁰ When the Centre provides grants to the States on conditions to help the State activities, the Central inspection and control being lax, the States accepting grants do not fully discharge the obligations willingly undertaken by them. In consequence, national programmes tend to lag behind". Thus, APPLEBY concludes:⁹¹

"No other large and important national government, I believe, is so dependent as India on theoretically subordinate but actually rather distinct units responsible to a different political control for so much of the administration of what are recognised as national programmes of great importance to the nation."

In spite of the detailed provisions in the Constitution regulating the Centre-State administrative relationship, there is not always smooth sailing. Stresses and strains arise between the Centre and the States at times. For example, the Constitution squarely rests the responsibility to protect the means of communication on the States, but such protection is not always forthcoming in adequate measure.

In November 1967, the Central Government addressed a general letter to all State Governments drawing their attention to their obligations under Arts. 256 and 257 and cautioning them that such a failure on their part was against the Constitution which clearly placed on them the responsibility to ensure proper functioning of the Central agencies and protection of Central property. The Central Government hoped that occasions would not arise necessitating resort by it to powers under Arts. 256 and 257. The Centre advised the States to seek Central

^{90.} *Supra*, Ch. XI, Sec. M.

^{91.} PUBLIC ADMINISTRATION, *supra*, at 17.

assistance if they ever felt that they could not on their own prevent interference with the working of Union agencies and services in their respective jurisdiction.

Embarrassment is caused to the Centre when a State Government of a political complexion different from that of the Central Government, in spite of the constitutional obligation to do so, does not give its full co-operation to the Centre in implementing its laws even in its exclusive area. One example of this may be mentioned here. The employees of the Central Government threatened to go on a token strike for a day. In anticipation of the strike, the Central Government promulgated the Essential Services Maintenance Ordinance, 1968, declaring the strike illegal and sent directives to the States as to how to deal with the threatened strike. The State Governments were requested to issue appropriate instructions to district authorities to take suitable action, including arrest of, and institution of cases against, the offenders. The Kerala Government publicly declared that it would not implement the Central directive but follow its own policies in the matter. The Centre then drew the attention of the State Government to Art. 256.⁹²

The State Government then informed the Centre that it would take all action necessary and found suitable, keeping in view the provisions of Art. 256. Later, the State Government withdrew all the criminal cases against those Central employees who had been arrested on charges of violence under the Central law and, though this caused embarrassment to the Centre, yet it could do nothing as the law enforcement machinery belongs to the States. The situation was saved by the Kerala High Court which held that the withdrawal of cases by the State was bad in law and directed that the accused persons be tried and not acquitted.⁹³

The intransigence of the Kerala Government to implement a Central law came in for a lot of criticism in the Lok Sabha.⁹⁴ The Central Government took the view that no State has a right to place its own interpretation on a Central law, or have its own policy on how it should be enforced. Under the Constitutional provisions, if a State fails to honour its obligation to enforce a Central law, the Centre can, under Art. 256, issue a directive to the defaulting State. If this is not heeded by the State Government, the Central Government can invoke Art. 356 as authorised by Art. 365.⁹⁵ But it is not feasible always to resort to such a drastic step.

As regards the relationship between Arts. 356 and 365, it may be pointed out that Art. 365 merely sets out one instance in which the President (*i.e.*, the Central Government) may hold that the State Government cannot be carried on in accordance with the provisions of the Constitution. Art. 356 is however much wider in scope than Art. 365. Art. 365 is not exhaustive of the situations where the President may form the said satisfaction under Art. 356.

Article 365 merely says that in case of failure to comply with the directions given, "it shall be lawful" for the President to hold that the requisite type of situation (as contemplated in Art. 356(1)) has arisen. It is not that each and every failure to observe a Central direction *ipso facto* results in the failure of the State Government.

92. *Supra*, Sec. D.

93. *Deputy Accountant-General v. State of Kerala*, AIR 1970 Ker 158.

94. LOK SABHA DEB., Nov. 19, 1968.

95. *Supra*, Sec. E.

Two conditions are pre-requisite for taking action under Art. 365, viz., (i) the directions given by the Centre must be lawful; and (ii) their disobedience must give rise to a situation contemplated in Art. 356(1). The President has to judge in each specific case whether such a situation has arisen or not. Art. 365 says it is permissible for the President to say so in case of failure of the State Government to observe a Central direction. This implies that there is 'discretion' which has to be applied fairly.¹

For example, in *Rajasthan v. Union of India*, the question was raised whether the Centre can issue a direction to a State to dissolve its legislative assembly and hold fresh elections for the House. There seems to be a difference of opinion amongst the Supreme Court Judges on this issue. For example, BEG, C.J., observed after referring to Arts. 256 and 257:

"It could, therefore, be argued that, although the Constitution itself does not lay down specifically when the power of dissolution should be exercised by the Governor on the advice of a Council of Ministers in the State, yet if a direction on that matter was properly given by the Union Government to a State Government, there is a duty to carry it out. The time for the dissolution of a State Assembly is not covered by any specific provision of the Constitution or any law made on the subject. It is possible, however, for the Union Government, in exercise of its residuary executive power to consider it a fit subject for the issue of an appropriate direction when it considers that the political situation in the country is such that a fresh election is necessary in the interest of political stability or to establish the confidence of the people in the Government of a State".²

But FAZL ALI, J., disagreed with the above view. Taking phraseology of Arts. 256 and 257 into consideration, he expressed the view that no such direction could be issued. He observed on this point:

"The Chief Minister, as the head of the Council of Ministers in the State, has the undoubted discretion to advise the Governor to dissolve the Assembly if a particular situation demands such a step. The Chief Minister is the best judge to assess the circumstances under which such an advice should be given to the Governor. The Central Government cannot interfere with this executive power of the State Government by giving directions under Art. 256 or Art. 257 of the Constitution because the dissolution of the Assembly by the Governor is purely a matter concerning the State and does not fall within the four corners of either Art. 256 or Art. 257 of the Constitution".³

FAZL ALI, J.'S opinion is more rational and consistent with the wordings of Art. 256 and 257 and with the federal concept.

Whenever there is a general strike, agitation or demonstration in a State, the State generally fails to give adequate protection to the Central Government's agencies so that these may keep on functioning normally, nor is adequate protection given to the Central property in the States against destruction by the agitators, although there is a specific constitutional obligation to do so.⁴ The result is that Central services like railways, posts and telegraph, etc., have to be suspended now and then in one State or the other. The Centre has drawn the attention of the

1. For further discussion on Arts. 356 and 365, see, next Chapter.

2. AIR 1977 SC at 1384.

Also, see, *infra*, Ch. XIII.

3. *Ibid*, at 1434.

4. LOK SABHA DEB., Feb. 13, 1968.

States to their obligations under Arts. 256 and 257 and has cautioned them that such a failure on their part is against the Constitution which clearly places on them the responsibility to ensure proper functioning of the Central agencies and protection of the Centre's properties, installations and institutions within the States' boundaries.

In anticipation of the Central Government employees' strike in 1968, the Centre deployed the Central Reserve Police in Kerala to protect Central Government offices and installations. The State objected to this on the ground that the Centre should have consulted it before doing so. The Centre, however, took the view that it was not obligatory for it to consult the State Government to deploy the Central Reserve Police to protect its own institutions in the State.

The Central Reserve Police has been created by an Act of Parliament under entry 2 of List I, pertaining to "any other armed forces of the Union".⁵ Though 'public order' is a State matter being entry 1 in List II,⁶ yet, "armed forces of the Union" have been specifically excluded from the scope of the entry.

Reference is also to be made to the Centre's obligation under Art. 355.⁷ The Centre, therefore, argued that if a State fails to protect its property, it could not stand by helplessly and let its property be destroyed or its agencies prevented from proper functioning. It must take necessary action to deal with any eventuality, particularly when, as it happened in Kerala, the State Government had declared that it would ignore the Central law preventing strike by Central employees and would not activate the local law and order apparatus for the purpose. The issues remain unresolved so far.

A similar controversy arose between the Centre and West Bengal on the deployment of the units of the Reserve Police to protect Central Government's property within the State without seeking its concurrence. Another angle of the controversy was that on April 10, 1969, there was statewide strike as a protest against firing by the guards of the Central Defence Ordnance Factory. The State Government failed to give protection against obstruction in the functioning of the Central Services within the State as a result of which these services had to be suspended for the day. The Central Government took a serious view of such an attitude on the part of some of the States.⁸

Although, for the present, the phase of tension between the Centre and the States has passed over, there is no knowing as to when a similar phase may re-emerge. The political complexion of the Central and State Governments has much to do with the stresses and strains in their relationship. What happened in the past is only a symptom of a much more serious constitutional crisis that could arise if a State decides to ignore the Central laws and fails to implement them. It is, therefore, necessary to re-orient Centre-State administrative relationship. A greater federalization of the important Central functions is necessary so that the Centre depends less on the States, and more on its own instrumentalities to enforce its laws.

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

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

7. *Infra*, next Chapter.

8. LOK SABHA DEB., April 11 & 14, 1969.

Before 1956, the entire administration of the Company Law was left to the States. The administration of the law by them was perfunctory and ineffective and most of the regulatory provisions remained unenforced. When, keeping in view the new economic developments in the country, thoughts began to be given to modify the Company law, it appeared inevitable that there should be a strong and competent administrative machinery to enforce the same and, therefore, the Centre established its own administrative agencies under the Companies Act, 1956.

The Centre has enacted the Industrial Security Force Act, 1969, with a view to ensure better protection and security of installations and industrial undertakings belonging to the Centre all over the country.⁹ Such a development *viz.*, federalization of Central administration, will be in line with the practices already in vogue in other federations.

It is also necessary to develop a Central mechanism for a close and effective Central supervision and inspection over an effective aided State activities. The performance of the States ought to be audited and watched closely by federal officers before releasing further grants to the States. In the U.S.A., this mechanism is extensively adopted. At the same time, in view of the known inadequacies and deficiencies in the State administration, it is also necessary to strengthen the same so as to make it more efficient. It is necessary to do so because a lot of administration falls in the State sector, particularly with regard to the multifarious programmes of social-economic well-being of the people. The States have to play a meaningful role as administrative entities because they are the nearest to the people, and much of the well-being of the people depends on effective State administration.

Tensions are bound to arise if there is a lack of balance between the responsibilities of the States and their administrative capacity. It is, therefore, necessary, even crucial, to devise ways and means to improve the effectiveness of administration at the State level. It is extremely necessary for the future well-being of the Nation that the States be in a position to discharge their role as robust administrative units.

The Finance Commission now recommends Central grants to the States for improvement of their essential administrative services.¹⁰ The Seventh Finance Commission suggested improvement in the pay scales of the State personnel and took into account the increased expenditure on this head in the revenue expenditure forecasts of the concerned States.

The Commission felt concerned that in many States "the level of emoluments is unduly depressed compared not only to the Centre but also to other States". The Commission also proposed Central grants to the States for up-gradation of standards of administration. The heads selected for the purpose were: fiscal services, judicial administration, district administration, police and jail administration.¹¹

9. RAJYA SABHA DEB., Feb. 28, 1969;

ANNUAL REPORT OF THE MINISTRY OF HOME AFFAIRS, 49 (1968-69).

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

11. REPORT, Ch. XI, Sec. L.

The Tenth Finance Commission has also recommended grants for the purpose of improvement in the State administration. The Eleventh Finance Commission has provided for Central Grants to the States for improvement of State administration in several fields, e.g., district administration, police administration, prisons administration, judicial administration, fiscal administration etc.¹² But the crucial question remains: do the States effectively use the money given to them by the Centre for the purposes for which the money is given? Is there any mechanism to ensure that the funds given to the States for the purpose of improving administration is being used for the specified purpose?

12. REPORT OF THE ELEVENTH FINANCE COMMISSION, 62-63 (2000).