

1. **THE JUDICIARY:** supreme Court, judicial review, judicial activism, PIL, Judicial reforms.
2. **THE STATE EXECUTIVE:** Governor, chief minister, and council of ministers; constitutional provisions and political trends.
3. **INDIAN PARTY SYSTEM:** Evolution and contemporary trends; coalition government at the centre and states, pressure groups in Indian politics.
4. **THE INTERACTION OF GOVT & SCIENTIFIC &TECHNOLOGY BUSINESS:** Previous and now their inter relationship and changing role in the society. Elites role of pressure groups and voluntary associations in society.
5. **LOCAL GOVT AND POLITICS:** Panchayat raj and municipal govt, structure, power, and functions. Political realities, significance of 73rd and 74th amendments, role of women in panchayats.
6. **BUREAUCRACY AND DEVELOPMRNT:** Post colonial India; its changing role in the context of liberalization and after, bureaucratic accountability.
7. **CHALLENGES TO INDIAN DEMOCRACY:**
 - A) Communalism, regionalism, violence, criminalization and corruption.
 - B) Regional disparities, environmental degradation, illiteracy, mass poverty, population growth, caste oppressions and socio economic inequalities among backward classes

PART III Government of the States

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CHAPTER 13 THE STATE EXECUTIVE

1. The General Structure.

As stated at the outset, our Constitution provides for a federal Government, having separate systems of administration for the Union and its Units, namely, the States. The Constitution contains provisions for the governance of both. It lays down a uniform structure for the State Government, in Part VI of the Constitution, which is applicable to all the States, save the State of Jammu & Kashmir which has a separate Constitution for its State Government, for reasons which will be explained in Chap. 15.

Broadly speaking the pattern of Government in the States is the same as that for the Union, namely, a parliamentary system,—the executive head being a constitutional ruler who is to act according to the advice of Ministers responsible to the State Legislature (or its popular House, where there are two Houses),—except in matters in respect of which the Governor of a State is empowered by the Constitution to act 'in his discretion' [Art. 163(1)].

2. The Governor.

At the head of the executive power of a State is the Governor just as the President stands at the head of the executive power of the Union. The executive power of the State is vested in the Governor and all executive action of the State has to be taken in the name of the Governor. Normally, there shall be a Governor for each State, but an amendment of 1956 makes it possible to appoint the same person as the Governor for the two or more States [Art. 153].

The Governor of a State is not elected but is appointed by the President and holds his office at the pleasure of the President. Any citizen of India who has completed 35 years of age is eligible for the office, but he must not hold any other office of profit, nor be a member of the Legislature of the Union or of any State [Art. 158]. There is no bar to the selection of a Governor from amongst members of a Legislature but if a Member of a Legislature is appointed Governor, he ceases to be a Member immediately upon such appointment.

The normal term of a Governor's office shall be five years, but it may be terminated earlier, by—

- (i) Dismissal by the President, at whose 'pleasure' he holds the office [Art. 156(1)]; (ii) Resignation [Art. 156(2)].

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Governor.

Appointment and term of Office of Governor.

The grounds upon which a Governor may be removed by the President are not laid down in the Constitution, but it is obvious that this power will be sparingly used to meet with cases of gross delinquency, such as bribery, corruption, treason, and the like or violation of the Constitution.¹

There is no bar to a person being appointed Governor more than once.²

Why an appointed Governor.

The original plan in the Draft Constitution was to have elected Governors. But in the Constituent Assembly, it was replaced by the method of appointment by the President, upon the following arguments³:

(a) It would save the country from the evil consequences of still another election, run on personal issues. To sink every province into the vortex of an election with millions of primary voters but with no possible issue other than personal, would be highly detrimental to the country's progress.

(b) If the Governor were to be elected by direct vote, then he might consider himself to be superior to the Chief Minister, who was merely returned from a single constituency, and this might lead to frequent friction between the Governor and the Chief Minister.

But under the Parliamentary system of Government prescribed by the Constitution, the Governor was to be constitutional head of the State,—the real executive power being vested in the Ministry responsible to the Legislature.

"When the whole of the executive power is vested in the Council of Ministers, if there is another person who believes that he has got the backing of the province behind him, and, therefore, at his discretion he can come forward and intervene in the governance of the province, it would really amount to a surrender of democracy."³

(c) The expenses involved and the elaborate machinery of election would be out of proportion to the powers vested in this Governor who was to act as a mere constitutional head.

(d) A Governor elected by adult franchise to be at the top of the political life in the State would soon prefer to be the Chief Minister or a Minister with effective powers. The party in power during the election would naturally put up for Governorship a person who was not as outstanding as the future Chief Minister with the result that the State would not be able to get the best man of the party. All the process of election would have to be gone through only to get a second rate man of the party elected as Governor. Being subsidiary in importance to the Chief Minister, he would be the nominee of the Chief Minister of the State, which was not a desirable thing.

(e) Through the procedure of appointment by the President, the Union Government would be able to maintain intact its control over the States.

(f) The method of election would encourage separatist tendencies. The Governor would then be the nominee of the Government of that particular province to stand for the Governorship. The stability and unity of the Governmental machinery of the country as a whole could be achieved only by adopting the system of nomination.

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He should be a more detached figure acceptable to the province, otherwise he could not function, and yet may not be a part of the party machine of the province. On the whole it would probably be desirable to have people from outside, eminent in something, education or other fields of life

who would naturally co-operate fully with the Government in carrying out the policy of the Government and yet represent before the public something above politics.³

The arguments which were advanced, in the Constituent Assembly, against nomination are also worthy of consideration:

- (i) A nominated Governor would not be able to work for the welfare of a State because he would be a foreigner to that State and would not be able to understand its special needs.
- (ii) There was a chance of friction between the Governor and the Chief Minister of the State no less under the system of nomination, if the Premier of the State did not belong to the same party as the nominated Governor.⁴
- (iii) The argument that the system of election would not be compatible with the Parliamentary or Cabinet system of Government is not strong enough in view of the fact that even at the Centre there is an elected President to be advised by a Council of Ministers. Of course, the election of the President is not direct but indirect.
- (iv) An appointed Governor under the instruction of the Centre might like to ran the administration in a certain way contrary to the wishes of the Cabinet. In this tussle, the Cabinet would prevail and the President-appointed Governor would have to be recalled. The system of election, therefore, was far more compatible with good, better and efficient Government plus the right of self-Government.
- (v) The method of appointment of the head of the State executive by the federal executive is repugnant to the strict federal system as it obtains in the U.S.A. and Australia.

Status of appointed Governor so far.

In actual working, it may be said that in States where one party has a clear majority, the part played by the Governor has been that of a constitutional and impartial head, but in those States where there are multiple parties with an uncertain command over the Legislature, the Governor has acted as a mere agent of the Centre in various matters, such as inviting a person to form a Ministry, because he belonged to the ruling party at the Centre, even though he had no clear following (as in the case of Sri Rajagopalachari in Madras, after the General election in 1952) or bringing about the removal of a Ministry having the confidence of the Legislature, by means of a report under Art. 356(as happened in Kerala in 1959, in the case of the Communist Ministry headed by Sri Namboodiripad). Nevertheless, there is one aspect in which the system of appointing an outsider by the Centre has proved to be beneficial, and that is the prevention of disruptive and separatist forces from impairing the national unity and strength as might otherwise have been possible without the knowledge of the Centre, under a locally elected Governor.

It is from this standpoint alone that one can tolerate the patently undemocratic instances of appointing a retiring or a retired member of the Indian Civil Service or the Indian Administrative Service (who is obviously a veteran bureaucrat) or of the Armed Forces as a Governor.

Conditions of Governor's office.

A Governor gets a monthly emolument of Rs. 36,0005, together with the use of an official residence free of rent and also such allowances and privileges as are specified in the Governor's (Emoluments, Allowances and Privileges) Act, 1982 as amended in 1998 (w.e.f. 1-1-1996). The emolument and allowances of a Governor shall not be diminished during his term of office [Art. 158(3)-(4)].

Powers of the Governor.

The Governor has no diplomatic or military powers like the President, but he possesses executive, legislative and judicial powers analogous to those of the President.

I. Executive. Apart from the power to appoint his Council of Ministers, the Governor has the power to appoint the Advocate-General and the Members of the State Public Service Commission. The Ministers as well as Advocate-General hold office during the pleasure of the Governor, but the Members of the State Public Service Commission cannot be removed by him, they can be removed only by the President on the report of the Supreme Court on reference made by the President and, in some cases, on the happening of certain disqualifications [Art. 317].

The Governor has no power to appoint Judges of the State High Court but he is entitled to be consulted by the President in the matter [Art. 217(1)].

Like the President, the Governor has the power to nominate members of the Anglo-Indian community to the Legislative Assembly of his State, if he is satisfied that they are not adequately represented in the Assembly; but while the President's corresponding power with regard to the House of the People is limited to a maximum of two members, in the case of the Governor the limit is one member only, since the Constitution (23rd Amendment) Act, 1969 [Art. 333].

As regards the upper Chamber of the State Legislature (in States where the Legislature is bicameral), namely, the Legislative Council, the Governor has a power of nomination of members corresponding to the power of the President in relation to the Council of States, and the power is similarly exercisable in respect of "persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social service" [Art. 171(5)]. It is to be noted that 'cooperative movement' is not included in the corresponding list relating to the Council of States. The Governor can so nominate 1/6 part of the total members of the Legislative Council.

II. Legislative. As regards legislative powers, the Governor is a part of the State Legislature [Art. 164] just as the President is a part of Parliament. Again, he has a right of addressing and sending messages, and summoning, proroguing and dissolving, in relation to the State Legislature, just as the President has in relation to Parliament.⁶ He also possesses a similar power of causing to be laid before the State Legislature the annual financial statement [Art. 202] and of making demands for grants and recommending 'Money Bills' [Art. 207].

His powers of 'veto' over State legislation and of making Ordinances are dealt with separately. (See Chap. 14 "Governor's power of veto" and "Ordinance-making power of Governor".)

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III.Judicial. The Governor has the power to grant pardons, reprieves, respites, or remission of punishments or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which executive power of the State extends [Art. 161]. He is also consulted by the President in the appointment of the Chief Justice and the Judges of the High Court of the State.

IV. Emergency Power. The Governor has no emergency powers⁷ to meet the situation arising from external aggression or armed rebellion as the President has [Art. 352(1)], but he has the power to make a report to the President whenever he is satisfied that a situation has arisen in which Government of the State cannot be carried on in accordance with the provisions of the Constitution [Art. 356], thereby inviting the President to assume to himself the functions of the Government of the State or any of them. [This is popularly known as 'President's Rule'.]

3. The Council of Ministers.

As has already been stated, the Governor is a constitutional head of the State executive, and has, therefore (subject to his discretionary functions noted below), to act on the advice of a Council of Ministers [Art. 163]. The provisions relating to the Council of Ministers of the Governor are, therefore, subject to exceptions to be stated presently, similar to those relating to the Council of Ministers of the President.

At the head of a State Council of Ministers is the Chief Minister (corresponding to the Prime Minister of the Union). The Chief Minister is appointed by the Governor,⁸ while the other Ministers are appointed by the Governor on the advice of the Chief Minister. The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State and individually responsible to the Governor. The Ministers are jointly and severally responsible to the Legislature. He/They is/are publicly accountable for the acts or conducts in the performance of duties.⁹ Any person¹⁰ may be appointed a Minister (provided he has the confidence of the Legislative Assembly), but he ceases to be a Minister if he is not or does not remain, for a period of six consecutive months, a member of the State Legislature. The salaries and allowances of Ministers are governed by laws made by the State Legislature [Art. 164].

Relationship between the Governor and his Ministers.

It may be said that, in general, the relation between the Governor and his ministers is similar to that between the President and his ministers, with this important difference that while the Constitution does not empower the President to exercise any function 'in his discretion', it authorises the Governor to exercise some functions 'on his discretion'. In this respect, the principle of Cabinet responsibility in the States differs from that in the Union.

Article 163(1) says—

"There shall be a Council of Ministers.... to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

It is because of this discretionary jurisdiction of the Governor that no amendment was made by the 42nd Amendment Act in Art. 163(1) as in Art. 74(1), which we have noticed in Chap. 11.

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In the exercise of the functions which the Governor is empowered to exercise in his discretion, he will not be required to act according to the advice of his ministers or even to seek such advice. Again, if any question arises whether any matter is or is not a matter as regards which the Governor is required by the Constitution to act in his discretion, the decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called into question on the ground that he ought or ought not to have acted in his discretion [Art. 163(2)].

Discretionary functions of Governor.

A. The functions which are specially required by the Constitution to be exercised by the Governor in his discretion are—

(a) Para 9(2) of the 6th Sch. which provides that the Governor of Assam shall, in his discretion, determine the amount payable by the State of Assam to the District Council, as royalty accruing from licences for minerals.¹¹

(b) Art. 239(2) [added by the Constitution (7th Amendment) Act, 1956] which authorises the President to appoint the Governor of a State as the administrator of an adjoining Union Territory and provides that where a Governor is so appointed, he shall exercise his functions as such administrator 'independently of his Council of Ministers'.

Special Responsibilities.

B. Besides the above functions to be exercised by the Governor 'in his discretion', there are certain functions under the amended Constitution which are to be exercised by the Governor 'on his special responsibility',—which practically means the same thing as 'in his discretion', because though in cases of special responsibility, he is to consult his Council of Ministers, the final decision shall be 'in his individual judgment', which no court can question. Such functions are—

(i) Under Art. 371(2), as amended,¹² the President may direct that the Governor of Maharashtra or Gujarat shall have a special responsibility for taking steps for the development of certain areas in the State, such as Vidarbha, Saurashtra.

(ii) The Governor of Nagaland shall, under Art. 371A(l)(b) (introduced in 1962), have similar responsibility with respect to law and order in that State so long as internal disturbances caused by the hostile Nagas in that State continue.

(iii) Similarly, Art. 371C(1), as inserted in 1971, empowers the President to direct that the Governor of Manipur shall have special responsibility to secure the proper functioning of the Committee of the Legislative Assembly of the State consisting of the members elected from the Hill Areas of that State.

(iv) Art. 371F(g), inserted by the Constitution (36th Amendment) Act, 1975, similarly, imposes a special responsibility upon the Governor of Sikkim "for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim".

In the discharge of such special responsibility, the Governor has to act according to the directions issued by the President from time to time, and subject thereto, he is to act 'in his discretion'.

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Discretion, in practice, in certain matters.

C. In view of the responsibility of the Governor to the President and of the fact that the Governor's decision as to whether he should act in his discretion in any particular matter is final [Art. 163(2)], it would be possible for a Governor to act without ministerial advice in certain other matters, according to the circumstances, even though they are not specifically mentioned in the Constitution as discretionary functions.¹³

(i) As an instance to the point may be mentioned the making of a report to the President under Art. 356, that a situation has arisen in which the Government of State cannot be carried on in accordance with the provisions of the Constitution. Such a report may possibly be made against a Ministry in power,—for instance, if it attempts to misuse its powers to subvert the Constitution. It is obvious that in such a case the report cannot be made according to ministerial advice. No such advice, again, will be available where one Ministry has resigned and another alternative Ministry cannot be formed. The making of a report under Art. 356, thus, must be regarded as a function to be exercised by the Governor in the exercise of his discretion.

Obviously, the Governor is also the medium through whom the Union keeps itself informed as to whether the State is complying with the Directives issued by the Union from time to time.

(ii) Further, after such a Proclamation as to failure of the Constitution machinery in the State is made by the President, the Governor acts as the agent of the President as regards those functions of the State Government which have been assumed by the President under the Proclamation [Art. 356(l)(a)].

(iii) In some other matters, such as the reservation of a Bill for consideration of the President [Art. 200], the Governor may not always be in agreement with his Council of Ministers, particularly when the Governor happens to belong to a party other than that of the Ministry. In such cases, the Governor may, in particular situations, be justified in acting without ministerial advice, if he considers that the Bill in question would affect the powers of the Union or

contravene any of the provisions of the Constitution even though his Ministry may be of a different opinion.^{14'15}

President's control over the Governor.

It is obvious that as regards matters on which the Governor is empowered to act in his discretion or on his 'special responsibility', the Governor will be under the complete control of the President.

As regards other matters, however, though the President will have a personal control over the Governor through his power of appointment and removal," it does not seem that the President will be entitled to exercise any effective control over the State Government against the wishes of a Chief Minister who enjoys the confidence of the State Legislature, though, of course, the President may keep himself informed of the affairs in the State through the reports of the Governor, which may even lead to the removal of the Ministry, under Art. 356, as stated above.

Whether Governor competent to dismiss a Chief Minister.

A sharp controversy has of late arisen upon the question whether a Governor has the power to dismiss a Council of Ministers, headed by the Chief Minister, on the assumption that the Chief Minister and his

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Cabinet have lost their majority in the popular House of the Legislature. The controversy has been particularly intriguing inasmuch as two Governors acted in contrary directions under similar circumstances. In West Bengal, in 1967, Governor Dharma Vira, being of the view that the United Front Ministry, led by Ajoy Mukherjee, had lost majority in the Legislative Assembly, owing to defections from that Party, asked the Chief Minister to call a meeting of Assembly at a short notice, and, on the latter's refusal to do so, dismissed the Chief Minister with his Ministry. On the other hand, in Uttar Pradesh in 1970, Governor Gopala Reddy dismissed Chief Minister Charan Singh, on a similar assumption, without even waiting for the verdict of the Assembly which was scheduled to meet only a few days later. Quite a novel thing happened in Uttar Pradesh in 1998 when the Governor Romesh Bhandari, being of the view that the Chief Minister Kalyan Singh Ministry had lost majority in the Assembly, dismissed him without affording him opportunity to prove his majority on the floor of the House and appointed Shri Jagdambika Pal as the Chief Minister which was challenged by Shri Kalyan Singh before the High Court which by an interim order put Shri Kalyan Singh again in position as the Chief Minister. This order was challenged by Shri Jagdambika Pal before the Supreme Court which directed a "composite floor test" to be held between the contending parties which resulted in Shri Kalyan Singh securing majority. Accordingly, the impugned interim order of the High Court was made absolute.¹⁷

Before answering the question with reference to the preceding instances, it should be noted that the Cabinet system of Government has been adopted in our Constitution from the United Kingdom and some of the salient conventions underlying the British system have been codified

in our Constitution. In the absence of anything to the contrary in the context, therefore, it must be concluded that the position under our Constitution is the same as in the United Kingdom.

In England, the Ministers being legally the servants of the Crown, at law the Crown has the power to dismiss each Minister, individually or collectively. But upon the growth of the Parliamentary system, it has been established that the Ministers, collectively, hold their office so long as they command a majority in the House of Commons. This is known as the 'collective responsibility' of Ministers. The legal responsibility of the Ministers, as a collective body, to the Crown has thus been replaced by the political responsibility of the Ministry to Parliament, and the Crown's power to dismiss a Prime Minister of his Cabinet has become obsolete,—the last instance being 1783.¹⁸ The Crown retains, however, his power to dismiss a Minister individually and, in practice, this power is exercised by the Crown on the advice of the Prime Minister himself, when he seeks to weed out an undesirable colleague.

Be that as it may, the above two propositions as they exist today in England have been codified in Cls. (1) and (2) of Art. 164 of our Constitution as follows :

"(1) ... and the Ministers shall hold office at the pleasure of the Governor; (2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State."

In the above context, the legitimate conclusion that can be drawn is that—

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(a) The Governor has the power to dismiss an individual Minister at any time.

Testing majority support.

(b) He can dismiss a Council of Ministers or the Chief Minister (whose dismissal means a fall of the Council of Ministers), only when the Legislative Assembly has expressed its want of confidence in the Council of Ministers, either by a direct vote of no-confidence or censure or by defeating an important measure or the like, and the Governor does not think fit to dissolve the Assembly. The Governor cannot do so at his pleasure on his subjective estimate of the strength of the Chief Minister in the Assembly at any point of time, because it is for the Legislative Assembly to enforce the collective responsibility of the Council of Ministers to itself, under Art. 164(2).

The above view of the Author has been upheld by the Supreme Court in S.R. Bommai v. Union of India,¹⁹ (a 9-Judge Bench) by observing that wherever a doubt arises whether a Ministry has lost the confidence of the House, the only way of testing is on the floor of the House.²⁰ The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President.²¹

4. The Advocate-General

Advocate-General.

Each State shall have an Advocate-General for the State, an official corresponding to the Attorney-General of India, and having similar functions for the State. He shall be appointed by the Governor of the State and shall hold office during the pleasure of the Governor. Only a person who is qualified to be a Judge of a High Court can be appointed Advocate-General. He receives such remuneration as the Governor may determine.

He shall have the right to speak and to take part in the proceedings of, but no right to vote in, the Houses of the Legislature of the State [Art. 177].

REFERENCES

1. A glaring exception to this sound principle took place when the President, on the advice of the National Front Prime Minister Sri V.P. Singh, in December 1989, asked all the Governors to resign, simply because another Party had come to power at the Union. Of course, eventually, some of them were not required to resign.
2. Thus, Sri V.V. Giri, who was appointed Governor of U.P. in 1958, was appointed Governor of Kerala in 1960 for the unexpired portion of his term and in June 1962 he was reappointed Governor of Kerala for a second term, limited up to June 1964 (Statesman, 10-6-1962), Srimati Padmaja Naidu, Governor of West Bengal, also got a second term.
3. C.A.D., Vol. VII, p. 455.
4. Indeed there did occur some friction between the Governor and the Chief Minister during 1987-89 in Andhra Pradesh and Kerala where they belonged to different political parties. But, strikingly, there was disagreement between the Governor Govind Narain Singh and the Chief Minister of Bihar (1985); and Governor Smt. Sarla Grewal and the Chief Minister of Madhya Pradesh (1989) even though hailing from the same party.
5. Emoluments of Governor as enhanced vide Act No. 27 of 1998, s. 2 (w.e.f. 1.1.1996).
6. Of course, as has been pointed out in other contexts, the Upper House of the Union Legislature, i.e., the Council of States or of the State Legislature, i.e., the Legislative Council, is not subject to dissolution but is subject to a system of periodical retirement. Hence, the President or the Governor's power of dissolution must be understood to refer to the dissolution of the House of the People and the Legislative Assembly, respectively.

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In those States where the State Legislature consists of one House only [Art. 168(l)(b)] (p. 233, post), a dissolution of the Legislative Assembly results in the dissolution of the State Legislature (because there is no Legislative Council to survive.)

7. Only the Governor of Jammu & Kashmir is vested with the power to impose Governor's Rule under s. 92 of Constitution of J. & K.

8. The Governor may appoint a person to be the Chief Minister on his own estimation that such person is likely to command a majority in the State Assembly and he can exercise this power even before the Assembly is fully constituted. Such act, itself, would not establish mala fides on the part of the Governor [Rajnarain v. Bhajanlal, (1982) P.&H., dated 20-10-1982; Statesman (D)/21-10-1982].

9. Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain, (1997) 1 S.C.C. 3.5 (para 10).

10. It is striking that no member of the 1975 Abdullah Ministry of Jammu & Kashmir was initially a member of the State Legislature.

11. The Naga Hills-Tuensang Area has been taken out of this discretionary sphere, by making it a separate State, named Nagaland. Hence, Para 18 of the 6th Sch. has been omitted in 1971.

12. That is, as amended by the Constitution (7th Amendment) Act, 1956, and the Bombay Reorganisation Act, 1960. By the Constitution (32nd Amendment) Act, 1973, Andhra Pradesh has been taken out of Art. 371 and provided for separately, in new Art. 371D.

13. Samsher v. State of Punjab, A. 1974 S.C. 2192 (paras 47, 88, 153).

14. This happened in the case of the Kerala Education Bill hide In re Kerala Education Bill A. 1958 S.C. 956]. In Hoechst Pharamaceuticals v. State of Bihar, A. 1953 S.C. 1019 (para 89), the function under Art. 200 has been held to be discretionary.

15. In some cases, the Supreme Court has observed that unless a particular provision of the Constitution expressly requires the Governor to act in his discretion, his power to act without the advice of Ministers cannot be drawn by implication [Sanjeevi v. Stale of Madras, (1970) 2 S.C.C. 672 (677). But this observation is now to be read subject to the exceptional contingencies mentioned in the 7-Judge decision in [Samsher v. Stale of Punjab, A. 1974 S.C. 2192, above].

16. The dismissal of the Tamil Nadu Governor, Prabhudas Patwari in October, 1980 [Statesman, 31-10-1980] demonstrates that the President's 'pleasure' under Art. 156(1) can be used by the Prime Minister to dismiss any Governor for political reasons, and without assigning any cause.

17. Jagdambika Pal v. Union of India, (1999) 9 S.C.C. 95.

18. Vide HALSBURY, LAWS OF ENGLAND (4th Ed. 1974), Vol. 8. Pp. 696-97.

19. S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1.

20. Ibid., para 395.

21. Ibid., para 119.

CHAPTER 14 THE STATE LEGISLATURE

The Bi-cameral and Uni-cameral Legislatures.

THOUGH a uniform pattern of government is prescribed for the States, in the matter of the composition of the Legislature, the Constitution makes a distinction between the bigger and the smaller States. While the Legislature of every State shall include the Governor and, in some of the States, it shall consist of two Houses, namely, the Legislative Assembly and the Legislative Council, while in the rest, there shall be only one House, i.e., the Legislative Assembly {Art. 168].

Owing to changes introduced since the inauguration of the Constitution, in accordance with the procedure laid down in Art. 169, the States having two Houses,¹ in 2000, are Bihar; Maharashtra;² Karnataka and Uttar Pradesh³ [Art. 168]. To these must be added Jammu & Kashmir, which has adopted a bi-cameral Legislature, by her own State Constitution.

Creation and abolition of Second Chambers in States.

It follows that in the remaining States,¹³ the Legislature is uni-cameral, that is, consisting of the Legislative Assembly only [Art. 168]. But the above list is not permanent in the sense that the Constitution provides for the abolition of the Second Chamber (that is, the Legislative Council) in a State where it exists as well as for the creation of such a Chamber in a State where there is none at present, by a simple procedure which does not involve an amendment of the Constitution. The procedure prescribed is a resolution of the Legislative Assembly of the State concerned passed by a special majority (that is, a majority of the total membership of the Assembly not being less than two-thirds of the members actually present and voting), followed by an Act of Parliament [Art. 169].

This apparently extraordinary provision was made for the States (while there was none corresponding to it for the Union Legislature) in order to meet the criticism, at the time of the making of the Constitution, that some of our States being of poorer resources, could ill afford to have the extravagance of two Chambers. This device was, accordingly, prescribed to enable each State to have a Second Chamber or not according to its own wishes. It is interesting to note that, taking advantage of this provision, the State of Andhra Pradesh, in 1957, created a Legislative Council, leading to the enactment of the Legislative Council Act, 1957, by Parliament. Through the same process, it has been abolished in 1985.¹

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On the other hand, West Bengal and Punjab have abolished their Second Chambers, pursuing the same procedure.³

Composition of the Legislative Assembly

The size⁴ of the Legislative Council shall vary with that of the Legislative Assembly,—the membership of the Legislative Council being not more than one-third or the

membership of the Legislative Assembly but not less than 40. This provision has been adopted so that the Upper House (the Council) may not get a predominance in the Legislature [Art. 171(1)].

The system of composition of the Council as laid down in the Constitution is not final. The final power of providing the composition of this Chamber of the State Legislature is given to the Union Parliament [Art. 171(2)]. But until Parliament legislates on the matter, the composition shall be as given in the Constitution, which is as follows: It will be a partly nominated and partly elected body,—the election being an indirect one and in accordance with the principle of proportional representation by the single transferable vote. The members being drawn from various sources, the Council shall have a variegated composition.

Broadly speaking, 5/6 of the total number of members of the Council shall be indirectly elected and 1/6 will be nominated by the Governor. Thus,—

- (a) 1/3 of the total number of members of the Council shall be elected by electorates consisting of members of local bodies, such as municipalities, district boards.
- (b) 1/12 shall be elected by electorates consisting of graduates of three years' standing residing in that State.
- (c) 1/12 shall be elected by electorates consisting of persons engaged for at least three years in teaching in educational institutions within the State, not lower in standard than secondary schools.
- (d) 1/3 shall be elected by members of the Legislative Assembly from amongst persons who are not members of the Assembly.
- (e) The remainder shall be nominated by the Governor from persons having knowledge or practical experience in respect of such matters as literature, science, art, co-operative movement and social service (The courts cannot question the bona fides or propriety of the Governor's nomination in any case).

Composition of Legislative Assembly

The Legislative Assembly of each State shall be composed of members chosen by direct election on the basis of adult suffrage from territorial constituencies. The number of members of the Assembly shall be not more than 500 nor less than 60. The Assembly in Mizoram and Goa shall have only 40 members each.

There shall be a proportionately equal representation according to population in respect of each territorial constituency within a State. There will be a readjustment by Parliament by law, upon the completion of each census [Art. 170].

As stated already, the Governor has the power to nominate⁵ one member of the Anglo-Indian community as he deems fit, if he is of opinion that they are not adequately represented in the Assembly [Art. 333]. Such reservation will cease on the expiration of fifty⁶ years from the commencement of the Constitution [Art. 334].

Duration of the Legislative Assembly,

The duration of the Legislative Assembly is five years, but—

- (i) It may be dissolved sooner than five years, by the Governor.⁷
- (ii) The term of five years may be extended in case of a Proclamation of Emergency by the President. In such a case, the Union Parliament shall have the power to extend the life of the Legislative Assembly up to a period not exceeding six months after the Proclamation ceases to have effect, subject to the condition that such extension shall not exceed one year at a time [Art. 172(1)].

Duration of the Legislative Council

The Legislative Council shall not be subject to dissolution. But one- third of its members shall retire on the expiry of every second year [Art. 172(2)]. It will thus be a permanent body like the Council of States, only a fraction of its membership being changed every third year.

A Legislative Assembly shall have its Speaker and Deputy Speaker, and a Legislative Council shall have its Chairman and Deputy Chairman, and the provisions relating to them are analogous to those relating to the corresponding officers of the Union Parliament.

Qualifications for membership of the State Legislature.

A person shall not be qualified to be chosen to fill a seat in the

Legislature of a State unless he—

- (a) is a citizen of India;
- (b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament [Art. 173].

Thus, the Representation of the People Act, 1951, has provided that a person shall not be elected either to the Legislative Assembly or the Council, unless he is himself an elector for any Legislative Assembly constituency in that State.

Disqualifications for membership.

The disqualifications for membership of a State Legislature as laid down in Art. 191 of the Constitution are analogous to the disqualifications laid down in Art. 102 relating to membership of either House of Parliament. Thus,—

A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State if he—

(a) holds any office of profit under the Government of India or the Government of any State, other than that of a Minister for the Indian Union or for a State or an office declared by a law of the State not to disqualify its

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holder (many States have passed such laws declaring certain offices to be offices the holding of which will not disqualify its holder for being a member of the Legislature of that State);

(b) is of unsound mind as declared by a competent court;

(c) is an undischarged insolvent;

(d) is not a citizen of India or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) is so disqualified by or under any law made by Parliament (in other words, the law of Parliament may disqualify a person for membership even of a State Legislature, on such grounds as may be laid down in such law). Thus, the Representation of the People Act, 1951, has laid down some grounds of disqualification, e.g., conviction by a court, having been found guilty of a corrupt or illegal practice in relation to election, being a director or managing agent of a corporation in which Government has a financial interest (under conditions laid down in that Act).

Legislative procedure in a State having Bi-cameral Legislature, as compared that in Parliament.

Article 192 lays down that if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the dis-qualifications mentioned above, the question shall be referred to the Governor of that State for decision who will act according to the opinion of the Election Commission. His decision shall be final and not liable to be questioned in any court of law.

The legislative procedure in a State Legislature with having two Chambers is broadly similar to that in parliament, save for differences on certain points to be explained presently.

I. As regards Money Bills, the position is the same. The Legislative Council shall have no power save to make recommendations to the Assembly for amendments or to withhold the Bill for a

period of 14 days from the date of receipt of the Bill. In any case, the will of the Assembly shall prevail, and the Assembly is not bound to accept any such recommendations.

It follows that there cannot be any deadlock between the two Houses at all as regards Money Bills.

Legislative Council compared with Council of a State

II. As regards Bills other than Money Bills, too, the only power of the Council is to interpose some delay in the passage of the Bill for a period of time (3 months) [Art. 197(l)(b)] which is, of course, larger than in the case of Money Bills. The Legislative Council of States., thus, shall not be a revising but mere advisory or dilatory Chamber. If it disagrees to such a Bill, the Bill must have second journey from the Assembly to the Council, but ultimately the view of the Assembly shall prevail and in the second journey, the Council shall have no power to withhold the Bill for more than a month [Art. 197(2)(b)].

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Herein the procedure in a State Legislature differs from that in the Parliament, and it renders the position of the Legislative Council even weaker than that of the Council of the States. The difference is as follows:

Provisions for resolving deadlock between two Houses.

While disagreement between the two Houses of Parliament is to be resolved by a joint sitting, there is no such provision for solving differences between the two Houses of the State Legislature,—in this latter case, the will of the lower House, viz., the Assembly, shall ultimately prevail and the Council shall have no more power than to interpose some delay in the passage of the Bill to which it disagrees.

This difference of treatment in the two cases is due to the adoption of two different principles as regards the Union and the State Legislatures, (a) As to Parliament,—it has been said that since the Upper House represents the federal character of the Constitution, it should have a status better than that of a mere dilatory body. Hence, the Constitution provides for a joint sitting of both Houses in case of disagreement between the House of the People and the Council of States, though of course, the House will ultimately have an upper hand, owing to its numerical majority at the joint sitting, (b) As regards the two Houses of the State Legislature, however, the Constitution of India adopts the English system founded on the Parliament Act, 1911, viz., that the Upper House must eventually give way to the Lower House which represents the will of the people. Under this system, the Upper House has no power to obstruct the popular House other than to effect some delay. This democratic provision has been adopted in our Constitution in the case of the State Legislature inasmuch as in this case, no question of federal importance of the Upper House arises.

The provisions as regards Bills other than Money Bills may now be summarised:

Comparison of procedure in Parliament and State Legislature.

(a) Parliament. If a Bill (other than a Money Bill) is passed by one House and (i) the other House rejects it or does not return it within six months, or (ii) the two Houses disagree as to amendment, the President may convene a joint sitting of the Houses, for the purpose of finally deliberating

and voting on the Bill. At such joint sitting, the vote of the majority of both Houses present and voting shall prevail and' the Bill shall be deemed to have been passed by both Houses with such amendments as are agreed to by such majority; and the Bill shall then be presented for his assent [Art. 108].

(b) State Legislature, (i) If a Bill (other than a Money Bill) is passed by the Legislative Assembly and the Council (a) rejects the Bill, or (b) passes it with such amendments as are not agreeable to the Assembly, or (c) does not pass the Bill within 3 months from the time when it is laid before the Council,—the Legislative Assembly may again pass the Bill with or without further amendments, and transmit the Bill to the Council again [Art. 197(1)].

If on this second occasion, the Council—(a) again rejects the Bill, or (b) proposes amendments, or (c) does not pass it within one month of the

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date on which it is laid before the Council, the Bill shall be deemed to have been passed by both Houses, and then presented to the Governor for his assent [Art. 197(2)].

In short, in the State Legislature, a Bill as regards which the Council does not agree with the Assembly, shall have two journeys from the Assembly to the Council. In the first journey, the Council shall not have the power to withhold the Bill for more than three months and in the second journey, not more than one month, and at the end of this period, the Bill shall be deemed to have been passed by both the Houses, even though the Council remains altogether inert [Art. 197].

(ii) The foregoing provision of the Constitution is applicable only as regards Bills originating in the Assembly. There is no corresponding provision for Bills originating in the Council. If, therefore, a Bill passed by the Council is transmitted to the Assembly and rejected by the latter, there is an end to the Bill.

The relative positions of the two Houses of the Union Parliament and of a State Legislature may be graphically shown as follows:

I. As regards Money Bills, the position is similar at the Union and the States:

(a) A Money Bill cannot originate in the Second Chamber or Upper House (i.e., the Council of States or the Legislative Council).

(b) The Upper House (i.e., the Council of States or the Legislative Council) has no power to amend or reject such Bills. In either case, the Council can only make recommendations when a Bill passed by the lower House (i.e., the House of the People or the Legislative Assembly, as the case may be) is transmitted to it. It finally rests with the lower House to accept or reject the recommendations made by the Upper House. If the House of the People or the Legislative Assembly (as the case may be) does not accept any of the recommendations, the Bill is deemed to have been passed by the Legislature in the form in which it was passed by the lower House and then presented to the President or the Governor (as the case may be), for his assent. If the lower House, on the other hand, accepts any of the recommendations of the Upper House, then the Bill shall be deemed to have been passed by the Legislature in the form in which it stands after acceptance of such recommendations.

On the other hand, if the Upper House does not return the Money Bill transmitted to it by the Lower House, within a period of 14 days from the date of its receipt in the Upper House, the Bill shall be deemed to have been passed by the Legislature, at the expiry of the period of 14 days, and then presented to the President or the Governor, as the case may be, even though the Upper House has not either given its assent or made any recommendations.

(c) There is no provision for resolving any deadlock as between the two Houses, as regards Money Bills, because no deadlock can possibly arise. Whether in Parliament or in a State Legislature, the CHAP. 14]

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will of the lower House (House of the People or the Legislative Assembly) shall prevail, in case the Upper House does not agree to the Bill as passed by the lower House.

II. As regards Bills other than Money Bills

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Parliament	State Legislature
(a) Such Bills may be introduced in either House of Parliament or of a State Legislature.	(a) Such Bills may be introduced in either House of Parliament or of a State Legislature.
(b) A Bill is deemed to have been passed by Parliament only if both Houses have agreed to the Bill in its original form or with amendments agreed to by both Houses. In case of disagreement between the two Houses in any of the following manner, the deadlock may be solved only by a joint sitting of the two Houses, if summoned by the President.	(b) The Legislative Council has no co-ordinate power, and in a case of disagreement between the two Houses, the will of the Legislative Assembly shall ultimately prevail. Hence, there is no provision for a joint sitting for resolving a deadlock between the two Houses.
(c) The disagreement may take place if a House, on receipt of a Bill passed by the other House— (i) rejects the Bill; or (ii) proposes amendments as are not agreeable to the other	(c) A disagreement between the two Houses may take place if the Legislative Council, on receipt of a Bill passed by the Assembly— (i) rejects the Bill; or (ii) makes amendments to

<p>House; or (iii) does not pass the Bill within six months of its receipt of the Bill.</p>	<p>the Bill, which are not agreed to by the originating House; or (iii) does not pass the Bill within three months from the date of its receipt from the originating House. While the period for passing a Bill received from the lower House is six months in the case of the Council of States, it is three months only in the case of the Legislative Council.</p>
<p>(d) In a case of disagreement, a passing of the Bill by the House of the People, a second time, cannot over-ride the Council of States. The only means of resolving the deadlock is a Joint sitting of the two Houses. But if the President, in his discretion, does not summon a joint sitting, there is an end of the Bill and, thus, the Council of States has effective power, subject to a joint sitting, of preventing the passing of a Bill.</p>	<p>(d) In case of such disagreement, a passing of the Bill by the Assembly for a second time is sufficient for the passing of the Bill by the Legislature, and if the Bill is so passed and transmitted to the Legislative Council again, the only thing that the Council may do is to withhold it for a period of one month from the date of its receipt of the Bill on its second journey. If the Council either rejects the Bill again, or proposes amendments not agreeable to the Assembly or allows one month to elapse without passing the Bill, the Bill shall be deemed to have been passed by the State Legislature in the form in which it is passed by the Assembly for the second time, with such amendments, if any, as have been made by the Council and as are agreed to by the Assembly. (e) The foregoing procedure applies only in the case of disagreement relating to a Bill originating in the Legislative Assembly. In the case of a Bill originating in the Legislative Council and transmitted to the Assembly, after its passage in the Council, if the Legislative Assembly either rejects the Bill or makes amendments which are not agreed to by the Council, there is an immediate end of the Bill, and no question of its passage by the Assembly would arise.</p>

Utility of the Second Chamber in a State.

It has been clear that the position of Legislative Council is inferior to that of the Legislative Assembly so much so that it may well be considered as a surplusage.

(a) The very composition of the Legislative Council, renders its position weak, being partly elected and partly nominated, and representing various interests.

(b) Its very existence depends upon the will of the Legislative Assembly, because the latter has the power to pass a resolution for the abolition of the second Chamber by an Act of Parliament.

(c) The Council of Ministers is responsible only to the Assembly.

(d) The Council cannot reject or amend a Money Bill. It can only withhold the Bill for a period not exceeding 14 days or make recommendations for amendments.

(e) As regards ordinary legislation [i.e., with respect to Bills other than Money Bills], too, the position of the Council is nothing but subordinate to the Assembly, for it can at most interpose a delay of four months (in two

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journeys) in the passage of a Bill originating in the Assembly and, in case of disagreement, the Assembly will have its way without the concurrence of the Council.

In the case of a Bill originating in the Council, on the other hand, the Assembly has the power of rejecting and putting an end to the Bill forthwith.

It will thus be seen that the second Chamber in a State is not even a revising body like the second Chamber in the Union Parliament which can, by its dissent, bring about a deadlock, necessitating a joint sitting of both Houses to effect the passage of the Bill (other than a Money Bill). Nevertheless, by reason of its composition by indirect election and nomination of persons having special knowledge, the Legislative Council commands a better calibre and even by its dilatory power, it serves to check hasty legislation by bringing to light the shortcomings or defects of any ill-considered measure.

When a Bill is presented before the Governor after its passage by the Houses of the Legislature, it will be open to the Governor to take any of the following steps:

(a) He may declare his assent to the Bill, in which case, it would become law at once; or,

(b) He may declare that he withholds his assent to the Bill, in which case the Bill fails to become a law; or,

(c) He may, in the case of a Bill other than a Money Bill, return the Bill with a message.

(d) The Governor may reserve⁸ a Bill for the consideration of the President. In one case reservation is compulsory, viz., where the law in question would derogate from the powers of the High Court under the Constitution.

In the case of a Money Bill, so reserved, the President may either declare his assent or withhold his assent. But in the case of a Bill other than a Money Bill, the President may, instead of declaring his assent or refusing it, direct the Governor to return the Bill to the Legislature for reconsideration. In the latter case, the Legislature must reconsider the Bill within six months and

if it is passed again, the Bill shall be presented to the President again. But it shall not be obligatory upon the President to give his assent in this case too [Art. 201].

It is clear that a Bill which is reserved for the consideration of the President shall have no legal effect until the President declares his assent to it. But no time limit is imposed by the Constitution upon the President either to declare that he assents or that he withholds his assent. As a result, it would be open to the President to keep a Bill of the State Legislature pending at his hands for an indefinite period of time, without expressing his mind.

It should also be noted that there is a third alternative for the President which was demonstrated in the case of the Kerala Education Bill, viz., that when a reserved Bill is presented to the President he may, for the purpose of deciding whether he should assent to, or return the Bill, refer to the Supreme Court,

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under Art. 143, for its advisory opinion where any doubts as to the constitutionality of the Bill arise in the President's mind.

Veto Powers of President and Governor, compared.

The veto powers of the President and Governor may be presented graphically, as follows:

President	Governor
(A) 1. May assent to the Bill passed by the Houses of Parliament.	1. May assent to the Bill passed by the State Legislature.
2. May declare that he withholds his assent, in which case, the Union Bill fails to become law.	2. May declare that he withholds his assent, in which case, it fails to become law.
3. In case of a Bill other than a Money Bill, may return it for reconsideration by Parliament, with a message to both Houses. If the Bill is again passed by Parliament, with or without amendments, and again presented to the President, the President shall have no other alternative than to declare his assent to it.	3. In case of a Bill other than a Money Bill, may return it for reconsideration by the State Legislature, with a message. If the Legislature again passes the Bill with or without amendments, and again presented to the Governor, the Governor shall have no other alternative than to declare his assent to it.
	4. Instead of either assenting to, withholding assent from, or returning the Bill for reconsideration by the State Legislature, Governor may reserve a Bill for consideration of the President, in any case he thinks fit.
	Such reservation is, however, obligatory if the Bill is so much derogatory to the powers of the High Court that it would endanger the constitutional position of the High Court, if

	the Bill became law.
(B) In the case of a State Bill reserved by the Governor for the President's consideration (as stated in para 4 of col. 2):	
(a) If it is a Money Bill, the President may either declare that he assents to it or withholds his assent to it.	
(b) If it is a Bill other than a Money Bill, the President may—	
(i) declare that he assents to it or that he withholds his assent from it, or	
(ii) return the Bill to the State Legislature with a message for reconsideration, in which case, the State Legislature must reconsider the Bill within six months, and if it is passed again, with or without amendments, it must be again presented, direct, to the President for his assent, but the President is not bound to give his assent, even though the Bill has been passed by the State Legislature, for a second time.	Once the Governor reserves a Bill for the President's consideration, the subsequent enactment of the Bill is in the hands of the President and the Governor shall have no further part in its career.

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The Governor's power to make Ordinances [Art. 213], having the force of an Act of the State Legislature, is similar to the Ordinance-making power of the President in the following respects :

Ordinance-making power of Governor.

- (a) The Governor shall have this power only when the Legislature, or both Houses thereof, are not in session;
- (b) It is not a discretionary power, but must be exercised with the aid and advice of ministers;
- (c) The Ordinance must be laid before the State Legislature when it reassembles, and shall automatically cease to have effect at the expiration of six weeks from the date of re-assembly, unless disapproved earlier by that Legislature.
- (d) The Governor himself shall be competent to withdraw the Ordinance at any time.
- (e) The scope of the Ordinance-making power of the Governor is coextensive with the legislative powers of the State Legislature, and shall be confined to the subjects in Lists II and III of Sch. VII.

But as regards repugnancy with a Union law relating to a concurrent subject the Governor's Ordinance will prevail notwithstanding repugnancy, if the Ordinance had been made in pursuance of 'instructions' of the President.

The peculiarity of the Ordinance-making power of the Governor is that he cannot make Ordinances without 'instructions' from the President if—

(a) A Bill containing the same provisions would under the Constitution have required the previous sanction of the President for the introduction thereof into the Legislature;⁹ or (b) the Governor would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President;¹⁰ or (c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President" [Art. 213].

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Ordinance-making power of President and Governor, compared.

The Ordinance-making powers of the President and a Governor may be graphically presented as follows:

President	Governor
1. Can make Ordinance only when either of the two Houses of Parliament is not in session.	1. Can make Ordinance only when the State Legislature or either of the two Houses (where the State Legislature is bi-cameral) is not in session.
The President or Governor must be satisfied that circumstances exist which render it necessary for him to take immediate action.	
	But Governor cannot make an Ordinance relating to three specified matters, without instructions from President (see above).
2. Ordinance has the same force and is subject to the same limitations as an Act of Parliament.	2. Ordinance has the same force and is subject to the same limitations as an Act of the State Legislature.
	But as regards repugnancy with a Union law relating to a Concurrent subject, if the Governor's Ordinance has been made in pursuance of instructions of the President', the Governor's Ordinance shall prevail as if it were an Act of the State Legislature which had been reserved for the consideration of the President and assented to by him.
3. (a) Must be laid before both Houses of Parliament when it reassembles.	3. (a) Must be laid before the Legislative Assembly or before both Houses of the State Legislature (where it is bi-cameral), when the Legislature re-assembles.

(b) Shall cease to operate on the expiry of six weeks from the reassembly of Parliament or, if, before that period, resolutions disapproving the Ordinance are passed by both Houses, from the date of the second of such resolutions.

(b) Shall cease to operate on the expiry of six weeks from the reassembly of the State Legislature or, if before the expiry of that period, resolutions disapproving the Ordinance are passed by the Assembly or, where there are two Houses the resolution passed by the Assembly is agreed to by the Council, from the date of the passing of the resolution by the Assembly in the first case, and of the agreement of the Council in the second case.

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Privileges of a State Legislature.

The privileges of the Legislature of a State are similar to those of the Union Parliament inasmuch as the constitutional provisions [Arts. 105 and 194] are identical. The question of the privileges of a State Legislature has been brought to the notice of the public, particularly in relation to the power of the Legislature to punish for contempt and the jurisdiction of the Courts in respect thereof. Though all aspects of this question have not yet been settled, the following propositions may be formulated from the decisions of the Supreme Court:

(a) Each House of the State Legislature has the power to punish for breach of its privileges or for contempt.

(b) Each House is the sole judge of the question whether any of its privileges has, in particular case, been infringed, and the Courts have no jurisdiction to interfere with the decision of the House on this point.

The Court cannot interfere with any action taken for contempt unless the Legislature or its duly authorised officer is seeking to assert a privilege not known to the law of Parliament; or the notice issued or the action taken was without jurisdiction.

(c) No House of the Legislature has, however, the power to create for itself any new privilege not known to the law and the Courts possess the power to determine whether the House in fact possesses a particular privilege.

(d) It is also competent for a High Court to entertain a petition for habeas corpus under Art. 226 or for the Supreme Court, under Art. 32, challenging the legality of a sentence imposed by a Legislature for contempt on the ground that it has violated a fundamental right of the petitioner and to release the prisoner on bail, pending disposal of that petition.

(e) But once a privilege is held to exist, it is for the House to judge be occasion and its manner of exercise. The Court cannot interfere with an erroneous decision by the House or its Speaker in respect of a breach of its privilege.

New States added since 1950.

Apart from those States which have merely changed their names (e.g., Madras has changed its name to Tamil Nadu; Mysore to Karnataka; United Provinces was renamed Uttar Pradesh immediately after the adoption of the Constitution), there has been an addition of various items in the list of States in the First Schedule to the Constitution, by reason of which a brief note should be given as to the new items to make the reader familiar as to their identity.

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Andhra Pradesh

The State of 'Andhra' was created by the Andhra State Act, 1953, comprising certain areas taken out of the State of Madras, and it was renamed 'Andhra Pradesh' by the States Reorganisation Act, 1956.

Gujarat.

The Bombay Reorganisation Act, 1960 split up the State of Bombay into two States, Gujarat and Maharashtra.

Kerala

The State of Kerala was created by the States Reorganisation Act, 1956, in place of the Part B State of Travancore Cochin of the original Constitution. Maharashtra. See under Gujarat, above.

Nagaland.

Nagaland was created a separate State by the State of Nagaland Act, 1962, by taking out the Naga Hills-Tuensang area out of the State of Assam.

Haryana

By the Punjab Reorganisation Act, 1966, the 17th State of the Union of India was constituted by the name of Haryana, by carving out a part of the territory of the State of Punjab.

Karnataka

The State of Mysore was formed by the States Reorganisation Act, 1956, out of the original Part B State of Mysore. It has been renamed, in 1973, as Karnataka.

Himachal Pradesh,

Some of the Union Territories have, of late, been demanding promotion to the status of a State. Of these, Himachal Pradesh became the fore-runner on the enactment of the State of Himachal Pradesh Act, 1970, by which Himachal Pradesh was added as the 18th State in the list of States, and omitted from the list of Union Territories, in the First Schedule of the Constitution.

Manipur and Tripura.

In the same manner, Manipur and Tripura were lifted up from the status of Union Territories (original Part C States), by the North-Eastern Areas (Reorganisation) Act, 1971.

Meghalaya

Meghalaya was initially created a 'sub-State' or 'autonomous State' within the State of Assam, by the Constitution (22nd Amendment) Act, 1969, by the insertion of Arts. 241 and 371 A. Subsequently, it was given the full status of a State and admitted in the 1st Schedule as the 21st State, by the North-Eastern Area (Reorganisation) Act, 1971.

Sikkim

As has been explained earlier, Sikkim (a Protectorate of India) was given the status of an 'associate State' by the Constitution (35th Amendment) Act, 1974, and thereafter added to the 1st Schedule as the 22nd State, by the Constitution (36th Amendment) Act, 1975.

Mizoram

By the State of Mizoram Act, 1986, Mizoram has been elevated from the status of a Union Territory to be the 23rd State in the 1st Schedule of the Constitution.

Arunachal Pradesh.

By a similar process, statehood has been conferred on the Union Territory of Arunachal Pradesh, by enacting the State of Arunachal Pradesh Act, 1986.

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Goa

Goa has been separated from Daman and Diu and made a State, by the Goa, Daman and Diu Reorganisation Act, 1987.

Chhattisgarh

Chhattisgarh has been carved out of the territories of the Madhya Pradesh by the Madhya Pradesh Reorganisation Act, 2000.

Uttaranchal

Uttaranchal has been created out of the territories of the Uttar Pradesh by the Uttar Pradesh Reorganisation Act, 2000.

Jharkhand

Jharkhand has been created by carving out a part of the territories of the Bihar by the Bihar Reorganisation Act, 2000.

REFERENCES

1. (a) The Legislative Council in Andhra Pradesh has been abolished by the Andhra Pradesh Legislative Council (Abolition) Act, 1985. (b) By reason of s. 8(2) of the Constitution (7th Amendment) Act, 1956, Madhya Pradesh shall have a second House (Legislative Council) only after a notification to this effect has been made by President. No such notification having been made so far, Madhya Pradesh is still having one Chamber, (c) The Legislative Council of Tamil Nadu has been abolished in August, 1986, by passing the Tamil Nadu Legislative Council (Abolition) Act, 1986.
2. Maharashtra has been created out of Bombay, by the Bombay Reorganisation Act, 1960.
3. West Bengal has abolished its Legislative Council w.e.f. 1-8-1969 by a notification under the West Bengal Legislative Council (Abolition) Act, 1969, and Punjab has abolished its Legislative Council, under the Punjab Legislative Council (Abolition) Act, 1969.
4. See Table XV for membership of the State Legislatures.
5. The number of Anglo-Indian members so nominated by the Governor of the several States as in September, 1990, was as follows : Andhra 1; Bihar 1; Karnataka 1; Kerala 1; Madhya Pradesh 1; Tamil Nadu 1; Maharashtra 1; Uttar Pradesh 1; West Bengal 1. The present position is not available.
6. The original period of ten years has been extended to sixty years, by the Constitution (8th Amendment) Act, 1959, the 23rd Amendment Act, 1969, the 45th Amendment Act, 1980, the 62nd Amendment Act, 1989 and the 79th Amendment Act, 1999.
7. In this context, we should refer to the much-debated question as to whether the Governor has any discretion to dissolve the Assembly without or against the advice of the Chief Minister, or through the device of suspending the State Legislature under Art. 356. In the general election to the Lok Sabha, held in March, 1977, the Congress Party was routed by the Janata Party. It was urged by the Janata Government at the Centre that in view of this verdict, the Congress Party had no moral right to continue in power in 9 States, viz., Bihar, Haryana, Himachal Pradesh, M.P., Orissa, Punjab, Rajasthan, U.P., West Bengal. In pursuance of this view, the Union Home Minister (Mr. Charan Singh) issued on, 18-4-1977, an 'appeal' to the Chief Ministers of these 9 States to advise their respective Governors to dissolve the Assemblies and hold an election in June, 1977 (while their extended term would have expired in March, 1978). But the Congress Party advised the Chief Ministers not to yield to this appeal or pressure, and contended that the proposition that the English Sovereign can dissolve Parliament without the advice of the Prime Minister was wrong and obsolete and that the Crown's prerogative in this behalf had been turned into a privilege of the Prime Minister. In short, under the British Parliamentary system which had been adopted under the Indian Constitution, a Governor could not dissolve the Assembly

contrary to the advice of the Chief Minister of the State. It was also urged that Art 356 was not intended to be used for such purposes.

The question was eventually taken to the Supreme Court by some of the affected States by way of a suit (under Art. 131) against the Union of India. The suit was dismissed by a Bench of 7 Judges, at the hearing on the prayer for temporary injunction, though the judges gave separate reasons in 6 concurring judgments [State of Rajasthan v.

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Union of India, A. 1977 S.C. 1361]. The Judges agreed on the following points: (i) The reasons behind an Executive decision to dissolve the Legislature are political and not justiciable in a court of law. (ii) So also is the question of the President's satisfaction for the purpose of using the power under Art. 356,—unless it was shown that there was no satisfaction at all or the satisfaction was based on extraneous grounds [paras 59, 83 (BEG. CJ.); 124 (CHANDRACHUD J.); 144 (BHAGWATI & GUPTA J.J.); 170 (GOSWAMI, J.); 179 (UNTWALIA, J.); 206 (FAZAL ALI,J.)]. All the Judges held that on the facts on the record, it was not possible to hold that the order of the President under Art. 356, suspending the constitutional system in the relevant States was actuated by mala fides or extraneous considerations.

Exercise of power under Art. 356 was received again by a 9Judge Bench of the Supreme Court in S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1. Explaining the Rajasthan case it has laid down the following points: (i) Proclamation under Art. 356 is subject to judicial review but to a limited extent, e.g. whether there was any material, whether it was relevant, whether mala fide etc. (ii) Till the proclamation is approved by Parliament it is not permissible for the President to take any irreversible action (such as dissolution of the House) under Art. 356(l)(a), (b), or (c). (iii) Even if approved by the Parliament the Court may order status quo ante to be restored, (iv) If the ruling party in the State suffers a defeat in election to the Lok Sabha it will not be a ground for exercise of power under Art. 3,56.

8. The entire function of reservation and veto is discretionary and non-justiciable [Hoechst Pharmaceuticals v. State of Bihar, A. 1953 S.C. 1019 (para 89)].

9. E.g., An Ordinance imposing reasonable restrictions upon inter-State trade or commerce [Art. 304, Proviso].

10. E.g., An Ordinance which might affect the powers of the Union [Art. 220].

11. E.g., An Ordinance affecting powers of the High Court [2nd Prov. on to Art. 200].

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CHAPTER 15 THE STATE OF JAMMU & KASHMIR

Peculiar position of the State.

THE State of Jammu & Kashmir holds a peculiar position under the Constitution of India.

It forms a part of the 'territory of India' as defined in Art. 1 of the Constitution, being the fifteenth State included in the First Schedule of the Constitution, as it stands amended. In the original Constitution, Jammu & Kashmir was specified as a 'Part B' State. The States Reorganisation Act, 1956, abolished the category of Part B States and the Constitution (7th Amendment) Act, 1956, which implemented the changes introduced by the former Act, included Jammu & Kashmir in the list of the 'States' of the Union of India, all of which were now included in one category.

Nevertheless, the special constitutional position which Jammu & Kashmir enjoyed under the original Constitution [Art. 370] has been maintained, so that all the provisions of the Constitution of India relating to the States in the First Schedule are not applicable to Jammu & Kashmir even though it is one of the States specified in that Schedule.

History of the integration of Jammu and Kashmir with India.

To understand why Jammu & Kashmir, being a State included in the First Schedule of the Constitution of India, should yet be accorded a separate treatment, a retrospect of the development of the constitutional relationship of the State with India becomes necessary. Under the British regime, Jammu & Kashmir was an Indian State ruled by a hereditary Maharaja. On the 26th of October, 1947, when the State was attacked by Azad Kashmir Forces with the support of Pakistan, the Maharaja (Sir Hari Singh) was obliged to seek the help of India, after executing an Instrument of Accession similar to that executed by the Rulers of other Indian States. By the Accession the Dominion of India acquired jurisdiction over the State with respect to the subjects of Defence, External Affairs and Communications, and like other Indian States which survived as political units at the time of the making of the Constitution of India, the State of Jammu & Kashmir was included as a Part B State in the First Schedule of the Constitution of India, as it was promulgated in 1950.

Position of the State under the original Constitution of India.

But though the State was included as a Part B State, all the provisions of the Constitution applicable to Part B States were not extended to Jammu & Kashmir. This peculiar position was due to the fact that having regard to the circumstances in which the State acceded to India, the

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Government of India had declared that it was the people of the State of Jammu & Kashmir, acting through their Constituent Assembly, who were to finally determine the Constitution of the State and the jurisdiction of the Union of India. The applicability of the provisions of the Constitution regarding this State were, accordingly, to be in the nature of an interim arrangement. (This was the substance of the provision embodied in Art. 370 of the Constitution of India.)

Implications of the Accession.

Since the liberality of the Government of India has been misunderstood and misinterpreted in interested quarters, overlooking the legal implications of the Accession of the State to India, we should pause for a

moment to explain these legal implications lest they be lost sight of in the turmoil of political events which have clouded the patent fact of the Accession. The first thing to be noted is that the Instrument of Accession signed by Maharaja Hari Singh on the 26th October, 1947, was in the same form¹ as was executed by the Rulers of the numerous other States which had acceded to India following the enactment of the Indian Independence Act, 1947. The legal consequences of the execution of the Instrument of Accession by the Ruler of Jammu & Kashmir cannot, accordingly, be in any way different from those arising from the same fact in the case of the other Indian States. It may be recalled² that owing to the lapse of paramountcy under s. 7(1)(b) of the Indian Independence Act, 1947, the Indian States regained the position of absolute sovereignty which they had enjoyed prior to the assumption of suzerainty by the British Crown. The Rulers of the Indian States thus became unquestionably competent to accede to either of the newly created Dominions of India and Pakistan, in exercise of their sovereignty. The legal basis³ as well as the form of Accession were the same in the case of those States which acceded to Pakistan and those which acceded to India. There is, therefore, no doubt that by the act of Accession the State of Jammu & Kashmir became legally and irrevocably a part of the territory of India and that the Government of India was entitled to exercise jurisdiction over the State with respect to those matters to which the Instrument of Accession extended. If, in spite of this, the Government of India had given an assurance to the effect that the Accession or the constitutional relationship between India and the State would be subject to confirmation by the people of the State, under no circumstances can any third party take advantage of such extra-legal assurances and claim that the legal act had not been completed.

Articles of the Constitution which apply of their own force to the State.

When India made her Constitution in 1949, it is natural that this dual attitude of the Government of India should be reflected in the position offered to the State of Jammu & Kashmir within the framework of that Constitution. The act of Accession was unequivocally given legal effect by declaring Jammu & Kashmir a part of the territory of India [Art. 1]. But the application of the other provisions of the Constitution of India to Jammu & Kashmir was placed on a tentative basis, subject to the eventual approval of the Constituent Assembly of the State. The Constitution thus provided that the only Articles of the Constitution which would apply of their own force to Jammu & Kashmir were—Arts. 1 and 370. The application of the other Articles was to be

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determined by the President in consultation with the Government of the State [Art. 370]. The legislative authority of Parliament over the State, again, would be confined to those items of the Union and Concurrent lists as correspond to matters specified in the Instrument of Accession. The above interim arrangement would continue until the Constituent Assembly for Jammu & Kashmir made its decision. It would then communicate its recommendations to the President, who would either abrogate Art. 370 or make such modification as might be recommended by that Constituent Assembly.

The Constitution Order of 1950.

In pursuance of the above provisions of the Constitution, the President made the Constitution (Application to Jammu & Kashmir) Order, 1950, in consultation with the Government of the State of Jammu & Kashmir,

specifying the matters with respect to which the Union Parliament would be competent to make laws for Jammu & Kashmir, relating to the three subjects of Defence, Foreign Affairs and Communications with respect to which Jammu & Kashmir had acceded to India.

Subsequent Orders.

Next, there was an Agreement between the Government of India and of the State at Delhi in June, 1952, as to the subjects over which the Union should have jurisdiction over the State, pending the decision of the Constituent Assembly of Jammu & Kashmir. The Constituent Assembly of Jammu & Kashmir ratified the Accession to India and also the decision arrived at by the Delhi Agreement as regards the future relationship of the State with India, early in 1954. In pursuance of this, the President, in consultation with the State Government, made the Constitution (Application to Jammu & Kashmir), Order, 1954, which came into force on the 14th of May, 1954. This Order implemented the Delhi Agreement as ratified by the Constituent Assembly and also superseded the Order of 1950. According to this Order, in short, the jurisdiction of the Union extended to all Union subjects under the Constitution of India (subject to certain slight alterations) instead of only the three subjects of Defence, Foreign Affairs and Communications with respect to which the State had acceded to India in 1947. This Order, as amended in 1963, 1964, 1965, 1966, 1972, 1974 and 1986, deals with the entire constitutional position of the State within the framework of the Constitution of India, excepting only the internal constitution of the State Government, which was to be framed by the Constituent Assembly of the State.⁴

Making of the State Constitution.

It has already been explained how from the beginning it was declared by the Government of India that, notwithstanding the Accession of the State of Jammu & Kashmir to India by the then Ruler, the future Constitution of the State as well as its relationship with India were to be finally determined by an elected Constituent Assembly of the State. With these objects in view, the people of the State elected a sovereign Constituent Assembly which met for the first time on October 31, 1951.

The Constitution (Application to Jammu & Kashmir) Order, 1954, which settled the constitutional relationship of the State of Jammu & Kashmir, did not disturb the previous assurances as regards the framing of the internal Constitution of the State by its own people. While the

Constitution of the other Part B States was laid down in Part VII of the Constitution of India (as promulgated in 1950), the State Constitution of Jammu & Kashmir was to be framed by the Constituent Assembly of that State. In other words, the provisions governing the Executive, Legislature and Judiciary of the State of Jammu & Kashmir were to be found in the Constitution drawn up by the people of the State and the corresponding provisions of the Constitution of India were not applicable to that State.

The first official act of the Constituent Assembly of the State was to put an end to the hereditary princely rule of the Maharaja. It was one of the conditions of the acceptance of the accession by the Government of India that the Maharaja would introduce popular Government in the State. In pursuance of this understanding, immediately after the Accession, the Maharaja invited Sheikh Mohammad Abdullah, President of the All Jammu & Kashmir National Conference, to form an interim Government, and to carry on the administration of the State. The interim Government later changed into a full-fledged Cabinet, with Sheikh Abdullah as the first Prime Minister. The Abdullah Cabinet, however, would not rest content with anything short of the abdication of the ruling Maharaja Sir Hari Singh. In June 1949, thus, Maharaja Hari Singh was obliged to abdicate in favour of his son Yuvaraj Karan Singh. The Yuvaraj was later elected by the Constituent Assembly of the State (which came into existence on October 31, 1951) as the 'Sadar-i-Riyasat'. Thus, came to an end the princely rule in the State of Jammu & Kashmir and the head of the State was henceforth to be an elected person. The Government of India accepted this position by making a Declaration of the President under Art. 370(3) of the Constitution (15th November, 1952) to the effect that for the purposes of the Constitution, 'Government' of the State of Jammu & Kashmir shall mean the Sadar-i-Riyasat of Jammu & Kashmir, acting on the advice of the Council of Ministers of the State. Subsequently, however, the name of Sadar-i-Riyasat has been changed to that of Governor.

We have already seen that in February, 1954, the Constituent Assembly of Jammu & Kashmir ratified the State's Accession to India, thus fulfilling the moral assurance given in this behalf by the Government of India, and also that this act of the Constituent Assembly was followed up by the promulgation by the President of India of the Constitution (Application to Jammu & Kashmir) Order, 1954, placing on a final footing the applicability of the provisions of the Constitution of India governing the relationship between the Union and this State.

The making of the State Constitution for the internal governance of the State was now the only task left to the Constituent Assembly. As early as November, 1951, the Constituent Assembly had made the Jammu & Kashmir Constitution (Amendment) Act, which gave legal recognition to the transfer of power from the hereditary Maharaja to the popular Government headed by an elected Sadar-i-Riyasat. For the making of the permanent Constitution of the State, the Constituent Assembly set up several Committees and in October, 1956, the Drafting Committee presented the Draft Constitution, which after discussion, was finally adopted on November 17, 1957, and given effect to from January 26, 1957. The State of Jammu & Kashmir thus acquired the distinction of having a separate Constitution for the

administration of the State, in place of the provisions of Part VI of the Constitution of India which govern all the other States of the Union.⁵

Important provisions of the State Constitution.

The more important provisions of the State Constitution of Jammu & Kashmir (as amended up to 1984) are as follows:

The Constitution declares the State of Jammu and Kashmir to be "an integral part of Union of India".

The territory of the State will comprise all the territories, which, on August 15, 1947, were under the sovereignty or suzerainty of the Ruler of the State [i.e., including the Pakistan-occupied area of Jammu & Kashmir]. This provision is immune from amendment.

The executive and legislative power of the State will extend to all matters except those with respect to which Parliament has powers to make laws for the State under the provisions of the Constitution of India.

Every person who is, or is deemed to be, a citizen of India shall be a permanent resident of the State, if on the 14th of May, 1954, he was a State subject of Class I or Class II, or, having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than 10 years prior to that date. Any person who, before the fourteenth day of May, 1954, was a State subject of Class I or of Class II and who, having migrated after the first day of March, 1947, to the territory now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature will on such return be a permanent resident of the State/⁶ The permanent residents will have all rights guaranteed to them under the Constitution of India [s. 10].

Under the original Constitution of Jammu & Kashmir, there was a difference between this State and other States of India as regards the Head of the State Government. While in the rest of India, the head of the State Executive was called 'Governor' and he is appointed by the President [Arts. 152, 155], the Executive head of the State of Jammu & Kashmir was called Sadar-i-Riyasat and he was to be elected by the State Legislative Assembly. This anomaly has, however, been removed by the Constitution of Jammu & Kashmir (6th Amendment) Act, 1965, as a result of which the nomenclature has been changed from Sadar-i-Riyasat to 'Governor' and he is to be 'appointed by the President under his hand and seal' [ss. 26-27] as in other States [Art. 155]. In the result, there is now no difference on this point, between Jammu & Kashmir and other States. As in other States, the executive power of the State will be vested in the Governor and shall be exercised by him with the advice of the Council of Ministers (except in the matter of appointment of the Chief Minister [s. 36] and of issuing a Proclamation for introducing 'Governor's Rule' in case of breakdown of constitutional machinery [s. 92]). The Governor will hold office for a term of five years. The Council of Ministers, headed by the Chief Minister, will be collectively responsible to the Legislative Assembly.

The Legislature of the State will consist of the Governor and two Houses, to be known respectively as the Legislative Assembly and the

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Legislative Council. The Legislative Assembly will consist of one hundred members chosen by direct election from territorial constituencies in the State; and two women members nominated by the Governor. Twenty-four seats in the Legislative Assembly will remain vacant to be filled by representatives of people living in Pakistan-occupied areas of the State. The Legislative Council will consist of 36 members. Eleven members will be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Kashmir, provided that of the members so elected at least one shall be a resident of Tehsil Ladakh and at least one a resident of Tehsil Kargil, the two outlying areas of the State. Eleven members will be elected by the members of the Legislative Assembly from amongst persons who are residents of the Jammu Province. The remaining 14 members will be elected by various electorates, such as municipal councils, and such other local bodies.

The High Court of the State will consist of a Chief Justice and two or more other Judges. Every Judge of the High Court will be appointed by the President after consultation with the Chief Justice of India and the Governor, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

There will be a Public Service Commission for the State. The Commission along with its Chairman will be appointed by the Governor.

Every member of the civil service or one holding a civil post will hold office under the pleasure of the Governor.

The official language of the State will be Urdu, but English will, unless the Legislature by law otherwise provides, continue to be used for all official purposes of the State [s. 145.]

The State Constitution may be amended by introducing a Bill in the Legislative Assembly and getting it passed in each House by a majority of not less than two-thirds of the total membership of that House. But no Bill or amendment seeking to make any change in the provisions relating to the relationship of the State with the Union of India, the extent of executive and legislative powers of the State or the provisions of the Constitution of India as applicable in relation to the State shall be introduced or moved in either House of the Legislature [s. 147].

Indira-Abdullah Agreement of 1975.

Notwithstanding the liberal measures introduced in the State by the adoption of a separate State Constitution, the pro-Pakistani elements in Jammu & Kashmir continued their agitation for the holding of a plebiscite to finally determine whether the State should accede to India or Pakistan and there were violent incidents initiated by the 'Plebiscite Front',—a pro-Pakistani party which had been formed with the avowed object of secession from India. Sheikh Abdullah got involved in these anti-Indian movements and went on criticising the Indian policy towards the State, as a

result of which he had to be placed under preventive detention in 1955. After a short release in 1964 on the profession of a changed attitude, he again went wrong, so that he was again detained in 1965 under the D.I.R., and eventually exonerated from the State in 1971. This was followed by a period of blowing hot and cold, leading to a series of negotiations between

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the representatives of India and the Plebiscite Front, and an agreement was eventually reached and announced, on February 24, 1975.⁷

The net political result of this Agreement was that the demand for plebiscite was abandoned by Abdullah and his followers and, on the other hand, it was agreed that the special status of the State of Jammu & Kashmir would continue to remain under the provisions of Art. 370 of the Constitution of India, which was described as a 'temporary' measure, in the original Constitution. A halt was, thus, cried to the progress of integration of this State with the Union of India, which had started in 1954, by giving larger autonomy to the State Assembly in certain matters.

It should, however, be mentioned that owing to differences over matters arising out of the Agreement, it has not been implemented by issuing a fresh Presidential Order under Art. 370.4

The salient features of the constitutional position of the State of Jammu & Kashmir in relation to the Union, as modified up-to-date, may now be summarised.

Recapitulation of position of Jammu & Kashmir vis-a-vis the Union

(a) Jurisdiction of Parliament. The jurisdiction of Parliament in relation to Jammu & Kashmir shall be confined to the matters enumerated in the Union List, and the Concurrent List,⁸ subject to certain modifications, while it shall have no jurisdiction as regards most of the matters enumerated in the Concurrent list. While in the Constitutional relation to the other States, the residuary power of legislation belongs to Parliament, in the case of Jammu & Kashmir, the residuary power shall belong to the Legislature of that State, excepting certain matters, specified in 1969, for which Parliament shall have exclusive power, e.g., prevention of activities relating to cession or secession, or disrupting the sovereignty or integrity of India. The power to legislate with respect to preventive detention in Jammu & Kashmir, under Art. 22(7), shall belong to the Legislature of the State instead of Parliament, so that no law of preventive detention made by Parliament will extend to that State.

By the Constitution (Application to Jammu & Kashmir) Order, 1986, however, Art. 249 has been extended to the State of Jammu & Kashmir, so that it would now be competent to extend the jurisdiction of Parliament to that State, in the national interest (e.g., for the protection of the borders of the State from aggression from Pakistan or China), by passing a resolution in the Council of States [Constitution Order, 129].

(b) Autonomy of the State in certain matters. The plenary power of the Indian Parliament is also curbed in certain other matters, with respect to which Parliament cannot make any law without the consent of the Legislature of the State of Jammu & Kashmir, where that State is to be

affected by such legislation, e.g., (i) alteration of the name or territories of the State [Art. 3], (ii) international treaty or agreement affecting the disposition of any part of the territory of the State [Art. 253].

Similar fetters have been imposed upon the executive power of the Union to safeguard the autonomy of the State of Jammu & Kashmir, a privilege which is not enjoyed by the other States of the Union. Thus,

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(i) No Proclamation of Emergency made by the President under Art. 352 on the ground of internal disturbance shall have effect in the State of Jammu & Kashmir, without the concurrence of the Government of the State.

(ii) Similarly, no decision affecting the disposition of the State can be made by the Government of India, without the consent of the Government of the State.

(iii) The Union shall have no power to suspend the Constitution of the State on the ground of failure to comply with the directions given by the Union under Art. 365.

(iv) Arts. 356-357 relating to suspension of constitutional machinery have been extended to Jammu & Kashmir by the Amendment Order of 1964. But "failure" would mean failure of the constitutional machinery as set up by the Constitution of Jammu & Kashmir and not Part VI of the Constitution of India.

In Jammu & Kashmir two types of Proclamations are made: (a) the "Governor's Rule" under s. 92 of the Constitution of Jammu & Kashmir, and (b) the "Presidents Rule" under Art. 356 as in the case of other States.

(a) The first occasion when President's Rule was imposed in Jammu & Kashmir was on 7-9-1986. It followed Governor's Rule which expired on 6-9-1986. The Proclamation was revoked on 6-11-1986 when Farooq Abdullah formed a ministry.

(b) Governor's Rule was imposed on 27-3-1977 for the first time and later on 19-1-1990.

Since 19-7-1990 the State had continuously been under President's Rule until 9-10-1996 when a popular Government, under the leadership of Farooq Abdullah, was formed on the basis of an election held in September, 1996 [Statesman, 10-10-1996].

Governor's Rule is provided by the State Constitution. In exercise of this power the Governor has the power, with the concurrence of the President, to assume to himself all or any of the functions of the Government of the State, except those of the High Court.

(v) The Union shall have no power to make a Proclamation of Financial Emergency with respect to the State of Jammu & Kashmir under Art. 360.

In other words, the federal relationship between the Union and the State of Jammu & Kashmir respects 'State rights' more than in the case of the other States of the Union.

(c) Fundamental Rights and the Directive Principles. The provisions of Part IV of the Constitution of India relating to the Directive Principles of State Policy do not apply to the State of Jammu & Kashmir. The provisions of Art. 19 are subject to special restrictions for a period of 25 years. Special rights as regards employment, acquisition of property and settlement have been conferred on 'permanent residents' of the State, by inserting a nevi Art. 35A. Articles 19(l)(f) and 31(2) have not been omitted, so that the fundamental right to property is still guaranteed in this State.

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(d) Separate Constitution for the State. While the Constitution for any of the other States of the Union of India is laid down in Part VI of the Constitution of India, the State of Jammu & Kashmir has its own Constitution (made by a separate Constituent Assembly and promulgated in 1957).

(e) Procedure for Amendment of State Constitution. As already stated, the provisions of Art. 368 of the Constitution of India are not applicable for the amendment of the State Constitution of Jammu & Kashmir. While an Act of Parliament is required for the amendment of any of the provisions of the Constitution of India, the provisions of the State Constitution of Jammu & Kashmir (excepting those relating to the relationship of the State with the Union of India) may be amended by an Act of the Legislative Assembly of the State, passed by a majority of not less than two-thirds of its membership; but if such amendment seeks to affects the Governor or the Election Commission, it shall have no effects unelss the law is reserved for the consideration of the President and receives his assent.

It is also to be noted that no amendment of the Constitution of India shall extend to Jammu & Kashmir unless it is extended by an Order of the President under Art. 370(1).

(f) No alteration of the area or boundaries of this State can be made by Parliament without the consent of the Legislature of the State of Jammu & Kashmir.

(g) Other Jurisdictions. By amendments of the Constitution Order, the jurisdictions of the Comptroller and Auditor-General, of the Election Commission, and the Special Leave Jurisdiction of the Supreme Court have been extended to the State of Jammu & Kashmir.

Power to put an end to Art. 370. Clause (3) of Art. 370 provides—

"Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify."

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification."

Recently, a plea has been raised by the Bharatiya Janata Party that the President should declare that Art. 370 shall cease to operate, so that the special status of J & K would be abolished and that State would be brought to the same level as that of the other States, to be governed by all the provisions of Part VI of the Constitution.

Since the Constituent Assembly, referred to in the Proviso to Cl. (3) [above] no longer exists, the President's power appears to be unfettered now. The arguments of the B J.P. to abolish the special status are—

(a) The makers of the Constitution of India intended that the special status was granted to J. & K. only as a temporary measure, and that is why Art. 370 was included in Part XXI under the label—"Temporary, Transitional and Special Provisions", and Cl. (3) was appended to Art. 370.

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(b) The people of J. & K. have abused the special status and entered into a conspiracy with the Government of Pakistan and the leaders of 'Pakistan-occupied Kashmir' to invite a veiled invasion from Pakistan.

The Congress Government has so far resisted the demand of the B J.P. on political grounds. History only can say what would happen if and when the B J.P. ever gains a position of predominance.

REFERENCES

1. Vide White Paper on Indian States (MS. 6) rule pp. 111, 165.
2. Vide Author's Commentary on the Constitution of India, 5th Ed., Vol. 4, p. 38.
3. Sections 5-6 of the Government of India Act, 1935, read with s. 7(l)(b) of the Indian Independence Act, 1947.
4. As to the Constitution of Jammu & Kashmir see pp. 27ff. of Author's Commentary on The Constitution of India, 6th Ed., Vol. P. Momenntious other changes were proposed to be introduced after the agreement arrived at between the Government of India and Sheikh Abdullah, in February, 1975. But this agreement could not be implemented owing to difference in matter of detail (see also f.n. 8, below.)
5. The very definition of 'State' (in Art. 152) for the purpose of Part VI excludes the State of Jammu & Kashmir.
6. Their position is sought to be drastically changed by a Resettlement Bill passed by the Jammu & Kashmir Legislature, which has been referred by the President to the Supreme Court of India for its opinion as to its constitutional validity.

7. Vide Statesman, Calcutta, 25-2-1975, pp. 1, 7. He was released shortly after this Agreement and made the Chief Minister in February, 1975, on the resignation of the Mir Qasim ministry. At the election held in July, 1975, Sheikh Abdullah was elected to the Jammu & Kashmir Assembly and his Chief Ministership was thus upheld by election. He was retaining that office till his death in 1982.

8. Until the amendment of the Order in 1963, the Concurrent List was altogether inapplicable to Jammu & Kashmir. Its application has been extended by the Amendment Order of 1964, subject to exceptions introduced in 1972.

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PART IV Administration of Union Territories

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CHAPTER 16 ADMINISTRATION OF UNION TERRITORIES AND ACQUIRED TERRITORIES

Genesis of Union Territories.

AS stated earlier, in the original Constitution of 1949, States were divided into three categories and included in Parts A, B and C of the First Schedule of the Constitution.

Part C States were 10 in number, namely,—Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh. Of these, Himachal Pradesh, Bhopal, Bilaspur, Kutch, Manipur, Tripura and Vindhya Pradesh had been formed by the integration of some of the smaller Indian States. The remaining States of Ajmer, Coorg and Delhi were Chief Commissioner's Provinces under the Government of India Acts, 1919 and 1935, and were thus administered by the Centre even before the Constitution.

The special feature of these Part C States was that they were administered by the President through a Chief Commissioner or a Lieutenant-Governor, acting as his agent. Parliament had legislative power relating to any subject as regards the Part C States, but the Constitution empowered Parliament to create a Legislature as well as a Council of Advisers or Ministers for a Part C State. In exercise of this power, Parliament enacted the Government of Part C States Act, 1951, by which a Council of Advisers or Ministers was set up in each Part C State, to advise the Chief Commissioner, under the overall control of the President, and also a Legislative Assembly to function as the Legislature of the State, without derogation to the plenary powers of Parliament.

In place of these Part C States, the Constitution (7th Amendment) Act, 1956 substituted the category of 'Union Territories' which are also similarly administered by the Union. As a result of

the reorganisation of the States by the States Reorganisation Act, 1956, the Part C States of Ajmer, Bhopal, Coorg, Kutch, and Vindhya Pradesh were merged into other adjoining States.

Union Territories.

The list of Union Territories, accordingly, included the remaining Part C States of Delhi; Himachal Pradesh¹ (which included Bilaspur); Manipur; and Tripura.¹ To these were added the Andaman and Nicobar Islands; and the Laccadive and Amindivi Islands. Under the original Constitution, the Andaman and Nicobar Islands were included in Part D of the First Schedule. The Laccadive, Minicoy and

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Amindivi Islands (renamed 'Lakshadweep' in 1973), on the other hand, were included in the territory of the State of Madras. The States Reorganisation Act and the Constitution (7th Amendment) Act, 1956 abolished Part D of the 1st Schedule and constituted it a separate Union Territory.

By the Constitution (Tenth, Twelfth, Fourteenth and Twenty-seventh) Amendment Acts, some others were added to the list of Union Territories.

Since some of the erstwhile Union Territories (Himachal Pradesh, Manipur, Tripura, Mizoram, Arunachal Pradesh¹ and Goa) have been lifted up into the category of 'States', the number of Union Territories is, at the end of 2000, seven¹ [see Table III, post].

Though all these Union Territories belong to one category, there are some differences in the actual system of administration as between the several Union Territories owing to the provisions of the Constitution as well as of Acts of Parliament which have been made in pursuance of the Constitutional provisions.

Administrator.

Article 239(1) provides that save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify.² Instead of appointing an Administrator from outside, the President may appoint the Governor of a State as the Administrator of an adjoining Union Territory; and where a Governor is so appointed, he shall exercise his functions as such Administrator independently of his Council of Ministers [Art. 239(2)].

All the Union Territories are thus administered by an Administrator as the agent of the President and not by a Governor acting as the head of a State.

Provision for Legislative assembly and Council Ministers.

In 1962, however, Art. 239A (amended by the 37th Amendment, 1974) was introduced in the Constitution, to empower Parliament to create a Legislature or Council of Ministers or both for some of the Union Territories. By virtue of this power, Parliament enacted the Government of Union Territories Act, 1963, providing for a Legislative Assembly as well as a Council of Ministers to advise the Administrator, in these Union Territories. Pondicherry alone is now left in this category, all other Union Territories have become States.

On 1-2-1992, Arts. 239AA and 239AB (inserted by Constitution 69th Amendment) came into force. To supplement these provisions the Government of National Capital Territory of Delhi Act, 1991 was enacted. Delhi has from 1993 a Legislative Assembly and a Council of Ministers. The Government of Delhi has all the legislative powers in the State List excepting entries 1 (Public Order), 2 (Police) and 18 (Land).

legislative power.

Parliament has exclusive legislative power over a Union Territory, including matters which are enumerated in the State List art.246(4)]. But so far as the two groups of Island Territories; Dadra and Nagar Haveli; Daman and Diu; Pondicherry; are

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President's Power to make Regulations as regards the Andaman & Nicobar Islands; Lakshadweep and other Islands.

concerned, the President has got a legislative power, namely, to make regulations for the peace, progress and good government of these Territories. This power of the President overrides the legislative power of Parliament inasmuch as a regulation made by the President as regards these Territories may repeal or amend any Act of Parliament which is for the time being applicable to the Union Territory [Art. 240(2)]. But the President's power to make regulations shall remain suspended while the Legislature is functioning in any of these States,—to be revived as soon as such Legislature is dissolved or suspended.

High Courts for Union Territories.

Parliament may by law constitute a High Court for a Union Territory or declare any court in any such Territory to be a High Court for all or any of the purposes of this Constitution [Art. 241]. Until such legislation is made the existing High Courts relating to such territories shall continue to exercise their jurisdiction. In the result, the Punjab and Haryana High Court acts as the High Court of Chandigarh; the Lakshadweep is under the jurisdiction of the Kerala High Court; the Calcutta High Court has got jurisdiction over the Andaman and Nicobar Islands [vide Table XVI], the Madras High Court has jurisdiction over Pondicherry; the Bombay High court over Dadra and Nagar Haveli; and the Gauhati High Court (Assam) over Mizoram and Arunachal Pradesh. The Territory of Goa, Daman and Diu had a Judicial Commissioner but recently the jurisdiction of the Bombay High Court has been extended to this Territory. Delhi has a separate High Court of its own since 1966.

Acquired Territories.

There are no separate provisions in the Constitution relating to the administration of Acquired Territories but the provisions relating to Union Territories will extend by virtue of their definition of 'Union Territory' [Art. 366(30)], as including "any other territory comprised within the territory of India but not specified in that Schedule". Thus, the Territory of Pondicherry, Karaikal, Yanam and Mahe, was being administered by the President of India through a Chief Commissioner until it was made a Union Territory, in 1962. Parliament has plenary power of legislation regarding such territory as in the case of the Union Territories [Art. 246(4)].

REFERENCES

1. Himachal Pradesh has since been transferred to the category of States, by the State of Himachal Pradesh -Act, 1970, and Manipur and Tripura, by the N.E. Areas (Reorganisation) Act, 1971. Similarly, by the State of Mizoram Act, 1986, the State of Arunachal Pradesh Act, 1986 and the Goa, Daman and Diu Reorganisation Act, 1987, the Union Territories of Mizoram, Arunachal Pradesh and Goa have been elevated to Statehood.
2. Heterogeneous designations have been specified by the President in the case of the different Union Territories:
 - (a) Administrator—Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep.
 - (b) Lieutenant Governor—Delhi; Pondicherry; Andaman and Nicobar Islands.

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PART V Local Government

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CHAPTER 17 THE NEW SYSTEM OF PANCHAYATS AND MUNICIPALITIES

History.

THE village Panchayat was a unit of local administration since the early British days, but they had to work under Government control. When Indian leaders pressed for local

autonomy at the national level, the British Government sought to meet this demand by offering concession at the lowest level, at the initial stage, by giving powers of self-government to Panchayats in rural area and municipalities in urban areas, under various local names under different enactments, e.g. the Bengal Local Self-Government Act, 1885; the Bengal Village Self-Government Act, 1919; the Bengal Municipal Act, 1884.

In the Government of India Act, 1935, the power to enact legislation was specifically given to the Provincial Legislature by Entry 12 in the Provincial Legislative list. By virtue of this power, new Acts were enacted by many other States vesting powers of administration, including criminal justice, in the hands of the Panchayats.

Notwithstanding such existing legislation, the makers of the Constitution of Independent India were not much satisfied with the working of these local bodies as institutions of popular government and, therefore, a Directive was included in the Constitution of 1949 in Art. 40 as follows:

The state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

But notwithstanding this Directive in Art. 40, not much attention was given to hold elections in these local units as a unit of representative democracy in the country as a whole. During the time of Mr. Rajeev Gandhi it was considered necessary to further the organisation of these local units by inserting specific provisions in the Constitution itself on the basis of which the Legislatures of the various States might enact detailed laws according to the guidelines provided by the Constitutional provisions.

The 73rd and 74th Constitution Amendment Acts.

The ideas so evolved, culminated in the passing of Constitution 73rd and 74th Amendment Acts, 1992 which inserted Parts IX and IX-A in the Constitution. While Part IX relates to the Panchayats, containing Arts. 243 to 243-O, Part IXA relates to the Municipalities, containing Arts. 243P to 243ZG. The provisions in Parts IX and IXA are more or less parallel or analogous.

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Special features of the new system.

Before entering into details, it may be pointed out that new system contained certain novel provisions, for example, direct election by the people in the same manner as at the Union and State levels; reservation of seats for women; an Election Commission to conduct election, a Finance Commission to ensure financial viability of these institutions.

Another striking feature is that the provisions inserted in the Constitution by Arts. 243-243ZG are in the nature of basic provisions which are to be supplemented by laws made by the respective State Legislatures, which will define the details as to the powers and functions of the various organs, just mentioned.

It is to be recalled that local Government including self-Government institutions in both urban and rural areas is an exclusive State subject under Entry 5 of List II of the 7th Sch., so that the Union cannot enact any law to create rights and liabilities relating to these subjects. What the Union has, therefore, done is to outline the scheme which would be implemented by the several

States by making laws, or amending their own existing laws to bring them in conformity with the provisions of the 73rd and 74th Constitution Amendment Acts.

After implementing legislation was enacted by the States, elections have taken place in most of the States and the Panchayats and Municipalities have started functioning under the new law. These amendments do not apply to Jammu & Kashmir, Meghalaya, Mizoram, Nagaland and National Capital Territory of Delhi.

[See, further, under Chap. 34—How the Constitution has worked, post].

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CHAPTER 18 PANCHAYATS

3-tier system.

PART IX of the Constitution envisages a three-tier system of Panchayats,¹ namely, (a) The village level; (b) The District Panchayat at the district level; (c) The Intermediate Panchayat which stands between the village and district Panchayats in the States where the population is above 20 lakhs.

Composition.

All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. The electorate has been named Gram Sabha consisting of persons registered in the electoral rolls relating to a village comprised within the area of a Panchayat. In this way representative democracy will be introduced at the grass roots.

The Chairperson of each Panchayat shall be elected according to the law passed by a State and such State Law shall also provide for the representation of Chairpersons of Village and Intermediate Panchayats in the District Panchayat, as well as members of the Union and State Legislature in the Panchayats above the village level.

Reservation of seats for Scheduled Castes and Scheduled Tribes.

Article 243D provides that seats are to be reserved for (a) Scheduled Castes, and (b) Scheduled Tribes. The reservation shall be in proportion to their population. If, for example, the Scheduled Castes constitute 30% of the population and the Scheduled Tribes 21%, then 30% and 21% seats shall be reserved for them respectively.

Out of the seats so reserved not less than 1/3rd of the seats shall be reserved for women belonging to Scheduled Castes and Scheduled Tribes, respectively.

Reservation for women.

Not less than 1/3rd of the total number of seats to be filled by direct elections in every Panchayat shall be reserved for women.

Reservation of offices of Chairpersons.

A State may by law make provision for similar reservation of the offices of Chairpersons in the Panchayats at the village and other levels.

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These reservations favouring the Scheduled Castes and Tribes shall cease to be operative when the period specified in Art. 334 (at present 60 years i.e., upto 24-1-2010).

A State may by law also reserve seats or offices of Chairpersons in the panchayat at any level in favour of backward classes of citizens.

Duration of Panchayat

Every Panchayat shall continue for five years from the date of its first meeting. But it can be dissolved earlier in accordance with the procedure prescribed by State law. Elections must take place before the expiry of the above period. In case it is dissolved earlier, then the elections must take place within six months of its dissolution. A Panchayat reconstituted after premature dissolution (i.e. before the expiry of the full period of five years) shall continue only for the remainder of the period. But if the remainder of the period is less than six months it shall not be necessary to hold elections.

Qualification for membership.

Article 243F provides that all persons who are qualified to be chosen to the State Legislature shall be qualified to be chosen as a member of a Panchayat. The only difference is that a person who has attained the age of 21 years will be eligible to be a member (in case of State Legislature the prescribed age is 25 years—Art. 173). If a question arises as to whether a member has become subject to any disqualification, the question shall be referred to such authority as the State Legislature may provide by law.

Powers, authority and responsibilities of Panchayats.

State Legislatures have the legislative power, to confer on the Panchayats such powers and authority as may be necessary to enable them to function as institutions of self-government [Arts. 243G-243H]. They may be entrusted with the responsibility of (a) preparing plans for economic development and social justice, (b) implementation of schemes for economic development and social justice, and (c) in regard to matters listed in the Eleventh Schedule (inserted by the 73rd Amendment). The list contains 29 items, e.g., land improvement, minor irrigation, animal husbandry, fisheries, education, women and child development etc. The 11th Sch. thus distributes powers between the State Legislature and the Panchayat just as the 7th Sch. distributes powers between the Union and the State Legislature.

Powers to impose tax and financial resources

A State may by law authorise a Panchayat to levy, collect and appropriate taxes, duties, tolls etc. The law may lay down the procedure to be followed as well as the limits of these exactions. It can also assign to a Panchayat various taxes, duties etc. collected by the State Government. Grants-in-aid may be given to the Panchayats from the Consolidated Fund of the State.

Panchayat Finance Commission

Within one year from 25th April 1993, i.e. the date on which the Constitution 73rd Amendment came into force and afterwards every five years the State Government shall appoint a Finance Commission to review the financial position of the Panchayats and to make recommendations as to—

- (a) the distribution between the State and the Panchayats of the net proceeds of taxes, duties, tolls and fees leivable by the State which may be divided between them and how allocation would be made among various levels of Panchayats;
- (b) what taxes, duties, tolls and fees may be assigned to the Panchayats;

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- (c) grant-in-aid to the Panchayats.

The report of the Commission, together with a memorandum of action taken on it, shall be laid before the State Legislature. These provisions are modelled on Art. 280 which contains provisions regarding appointment of a Finance Commission for distribution of finances between the Union and the States.

State Election Commission.

Article 243K is designed to ensure free and fair elections to the Panchayats.

Article 243K provides for the Constitution of a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. Powers of superintendence, direction and control of elections to the Panchayats, including preparation of electoral rolls for it shall vest in the State Election Commission. To ensure the independence of the Commission it is laid down that State Election Commissioner can be removed only in the same manner and on the same grounds as a Judge of a High Court. The State Legislatures have the power to legislate on all matters relating to elections to Panchayats.

Bar to interference by Courts in electoral matters.

As under Art. 329, courts shall have no jurisdiction to examine the validity of a law, relating to delimitation of constituencies of the allotments of seats, made under Art. 243K. An election to a Panchayat can be called in question only by an election petition which should be presented to

such authority and in such manner as may be prescribed by or under any law made by the State Legislature.

REFERENCES

1. For the text of the 73rd Amendment Act relating to Panchayats [Arts. 243-243-O], see Author's Constitution Amendment Acts, 7th Ed. pp. 170-77; Shorter constitution of India, Uth Ed., Prentice-Hall of India, pp. 815-20.

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CHAPTER 19 MUNICIPALITIES AND PLANNING COMMITTEES

PART IXA which has come into force on 1-6-1993 gives a constitutional foundation to the local self-government units in urban areas. In fact such institutions are in existence all over the country.

Some of the provisions are similar to those contained in Part IX, e.g. Reservation of Seats, Finance Commission, Election Commission etc.

This part gives birth to two types of bodies: (i) Institutions of self-government [Art. 243Q], and (ii) Institutions for planning [Arts. 243ZX and 243 ZE].

Institutions of self-government, called by a general name "municipalities" are of three types:

- (a) Nagar Panchayat, for a transitional area, i.e. an area which is being transformed from a rural area to an urban area.
- (b) Municipal Council for a smaller urban area.
- (c) Municipal Corporation for a larger urban area.

Article 243 Q makes it obligatory for every State to constitute such units. But if there is an urban area or part of it where municipal services are being provided or proposed to be provided by an industrial establishment in that area then considering also the size of the area and other factors the Governor may specify it to be an industrial township. For such an area it is not mandatory to constitute a Municipality.

Composition of Municipalities.

The members of a municipality would generally be elected by direct election. The Legislature of a State may by law provide for representation in a municipality of (i) persons having special knowledge or experience in municipal administration, (ii) Members of Lok Sabha, State Assembly, Rajya Sabha and Legislative Council, and (iii) the Chairpersons of Committees

constituted under Cl. (5) of Art. 243S. The Chairperson shall be elected in the manner provided by the Legislature.

Wards Committee,

For one or more wards comprised within the territorial area of a municipality having a population of three lacs or more it would be obligatory to constitute Ward Committees. The State Legislature shall make provision with respect to its composition, territorial area and the manner in which the seats in a ward committee shall be filled.

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Other Committees.

It is open for the State Legislature to constitute Committees in addition to the wards committees.

Reservations of seats for Scheduled Castes and Scheduled Tribes.

As in Part IX reservations of seats are to be made in favour of the Scheduled Castes and Scheduled Tribes in every Municipality.

Reservation for women.

Out of the total number of seats to be filled by direct elections at least 1/3rd would be reserved for women. This includes the quota for women belonging to Scheduled Castes and Tribes.

Reservation of offices of Chair persons.

It has been left to the State legislature to prescribe by law the manner of reservation of the offices of the Chairpersons of Municipalities.

All reservations in favour of Scheduled Castes and Tribes shall come to an end with the expiry of the period specified in Art. 334.

It is permissible for a State Legislature to make provisions for reservation of seats or offices of Chairpersons in favour of backward classes.

Duration of Municipalities.

Every Municipality shall continue for five years from the date of its first meeting. But it may be dissolved earlier according to law. Article 243Q further prescribes that before dissolution a reasonable opportunity of being heard must be given to the municipality. Elections to constitute a Municipality shall be completed before the expiry of the period of five years. If the Municipality has been superseded before the expiry of its term, the elections must be completed within six months of its dissolution. A Municipality constituted after its dissolution shall continue only for

the remainder of the term. But if the remainder of the period is less than six months it shall not be necessary to hold elections.

It has been provided that no amendment of the law in force shall cause dissolution of a Municipality before the expiry of the five years term.

Qualification for membership.

Article 243V lays down that all persons who are qualified to be chosen to the State legislature shall be qualified for being a member of a Municipality. There is an important difference. Persons who have attained the age of 21 years will be eligible to be a member. While the constitutional requirement is that for election to the State legislature of a State a person must have attained the age of 25 years [Art. 173].

Powers, authority and responsibilities of Municipalities.

Legislatures of States have been conferred the power [Art. 243W] to confer on the Municipalities all such powers and authority as may be necessary to enable them to function as institutions of self-government. It has specifically been mentioned that they may be given the responsibility of (a) preparation of plans for economic development and social justice, (b) implementation of schemes as may be entrusted to them, and (c) in regard to matters listed in the 12th schedule. This schedule contains 18 items, e.g. Urban Planning, Regulation of Land Use, Roads and

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Bridges, Water Supply, Public Health, Fire Services, Urban Forestry, Slums etc.

Power to impose taxes and financial resources.

A State Legislature may by law authorise a Municipality to levy, collect and appropriate taxes, duties, tolls etc. The law may lay down the limits and prescribe the procedure to be followed. It can also assign to a Municipality various taxes, duties etc. collected by the State Government. Grants-in-aid may be given to the Municipalities, from the Consolidated Fund of the State.

Panchayat Finance Commission.

The Finance Commission appointed under Art. 243-1 (see Chap. 18 under Panchayat Finance Commission) shall also review the financial position of the Municipalities and make recommendations as to—

(a) the distribution between the State and the Municipalities of the net proceeds of taxes, duties, tolls and fees leviable by the State which may be divided between them and allocation of shares amongst different levels of Municipalities.

(b) the taxes, duties, tolls and fees that may be assigned to the Municipalities.

- (c) grants-in-aid to the Municipalities.
- (d) the measures needed to improve the financial position of the Municipalities.
- (e) any other matter that may be referred to it by the Governor.

Elections to Municipalities.

The State Election Commission appointed under Art. 243K shall have the power of superintendence, direction and control of (i) the preparation of electoral rolls for, and (ii) the conduct of all elections to the Municipalities. State Legislatures have been vested with necessary power to regulate by law all matters relating to elections to Municipalities.

Bar to interference by courts in electoral matters.

The courts shall have no jurisdiction to examine the validity of a law, relating to delimitation of constituencies or the allotment of seats made under Art. 243ZA. An election to a Municipality can be called in question only by an election petition which should be presented to such authority and in such manner as may be prescribed by or under any law made by the State Legislature.

Committees for (a) District Planning and (b) Metropolitan Planning.

Apart from giving constitutional recognition to Municipalities the 74th Amendment¹ lays down that in every State two committees shall be constituted.

- (1) At the district level a District Planning Committee [Art. 243ZD].
- (2) In every metropolitan area a Metropolitan Planning Committee [Art. 243ZB].

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The composition of the committees and the manner in which the seats are to be filled are to be provided by a law to be made by the State legislature. But it has been laid down that,—

- (a) in case of the District Planning Committee at least 4/5th of the members shall be elected by the elected members of the district level Panchayat and of the Municipalities in the district from amongst themselves. Their proportion would be in accordance with the ratio of urban and rural population of the district.
- (b) in case of Metropolitan Planning Committee at least 2/3rd of the members of the committee shall be elected by the Members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area from amongst themselves. The proportion of seats to be shared by them would be based on the ratio of the population of the Municipalities and of the Panchayats in the area.

The State legislature would by law make provision with respect to (i) the functions relating to district planning that may be assigned to the district committees, and (ii) the manner in which the Chairperson of a district committee may be chosen.

The Committee shall prepare and forward the development plan to the State Government. In regard to the Metropolitan Planning Committee which is to prepare a development plan for the whole Metropolitan area the State Legislature may by law make provision for

- (1) the representation of the Central and State Governments and of such organisations and institutions as may be deemed necessary,
- (2) the functions relating to planning and co-ordination for the Metropolitan area,
- (3) the manner in which the Chairpersons of such committees shall be chosen.

The development plan shall be forwarded to the State Government.

Addition to the duties of the Finance Commission under Art. 280.

This part adds one more function to the duties cast on the Finance Commission appointed by the President under Art. 280. The Commission will make recommendations in regard to the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the State Finance Commission.

REFERENCES

1- For the text of the 74th Amendment Act relating to Municipalities [Arts. 243P-243ZG), see Author's Constitution Amendment Acts, 7th Ed., pp. 177-84; Shorter Constitution of India, 11th Ed., Prentice-Hall of India, pp. 821-27.

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PART VI Administration of Special Areas

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CHAPTER 20 ADMINISTRATION OF SCHEDULED AND TRIBAL AREAS

THE Constitution makes special provisions for the Administration of certain areas called 'Scheduled Areas' in States other than Assam, Meghalaya, Tripura and Mizoram even though such areas are situated within a State or Union Territory [Art. 244(1)], presumably because of the backwardness of the people of these Areas. Subject to legislation by Parliament, the power to

declare any area as a 'Scheduled Area' is given to the President [5th Schedule, paras 67] and the President has made the Scheduled Areas. Scheduled Areas Order, 1950, in pursuance of this power. These are Areas inhabited by Tribes specified as 'Scheduled Tribes', in States other than Assam, Meghalaya Tripura and Mizoram.¹ Special provisions for the administration of such Areas are given in the 5th Schedule.

Tribal Areas.

The Tribal Areas in the States of Assam, Meghalaya, Tripura² and Mizoram are separately dealt with [Art. 244(2)], and provisions for their administration are to be found in the Sixth Schedule to the Constitution.

The systems of administration under the Fifth and Sixth Schedules may be summarised as follows:

Administration of Schedule Areas States other than Assam, Meghalaya, Tripura and Mizoram.

I. The 5th Schedule of the Constitution deals with the administration and control of Scheduled Areas as well as of in Scheduled Tribes in States other than Assam, Meghalaya, Tripura and Mizoram. The main features of the administration provided in this Schedule are as follows:

The executive power of the Union shall extend to giving directions to the respective States regarding the administration of the Scheduled Areas [Sch. V, para 3]. The Governors of the States in which there are 'Scheduled Areas'¹ have to submit reports to the President regarding the administration of such Areas, annually or whenever so required by the President [Sch. V, para 3]. Tribes Advisory Councils are to be constituted to give advice on such matters as welfare and advancement of the Scheduled Tribes in the States as may be referred to them by the Governor [Sch. V, para 4].

The Governor is authorised to direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or shall apply only subject to exceptions or modifications. The Governor is also authorised to make regulations to prohibit or restrict the transfer of land by, or among members of, the Scheduled Tribes, regulate the allotment of land,

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and regulate the business of money-lending. All such regulations made by the Governor must have the assent of the President [Sch. V, para 5].

The foregoing provisions of the Constitution relating to the administration of the Scheduled Areas and Tribes may be altered by Parliament by ordinary legislation, without being required to go through the formalities relating to the amendment of the Constitution [Sch. V, para 7(2)].

The Constitution provides for the appointment of a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States. The President may appoint such Commission at any time, but the appointment of such Commission at the end of ten

years from the commencement of the Constitution is obligatory [Art. 339(1)]. A Commission was accordingly appointed (with Sri U.N. Dhebar as Chairman) in 1960 and it submitted its report to the President towards the end of 1961.

Tribal Areas in Assam, Meghalaya, Tripura and Mizoram.

II. The Tribal Areas in Assam, Meghalaya, Tripura and Mizoram are specified in the Table appended to the 6th Schedule (para 20) in the Constitution, which has undergone several amendments. Originally, it consisted of two Parts, A and B. But since the creation of the States of Nagaland, the Table (as amended in 1972, 1984 and 1988) includes 9 areas, in four Parts:

Part I—I. The North Kachar Hills District; 2. The Karbi Anglong District.

Part II—1. The Khasi Hills District; 2. The Jaintia Hills District; 3. The Garo Hills District (in Meghalaya).

Part IIA—Tripura Tribal Areas District.

Part III—1. The Chakma District; 2. The Mara District; 3. The Lai District.

While the administration of Scheduled Areas in States other than Assam, Meghalaya, Tripura and Mizoram² is dealt with in Sch. V, the 6th Schedule deals with the tribal areas in Assam, Meghalaya, Tripura and Mizoram.²

These Tribal Areas are to be administered as autonomous districts. These autonomous districts are not outside the executive authority of the State concerned but provision is made for the creation of District Councils and Regional Councils for the exercise of certain legislative and judicial functions. These Councils are primarily representative bodies and they have got the power of law-making³ in certain specified fields such as management of a forest other than a reserved forest, inheritance of property, marriage and social customs, and the Governor may also confer upon these Councils the power to try certain suits or offences.⁴ These Councils have also the power to assess and collect land revenue and to impose certain specified taxes. The laws made by the Councils shall have, however, no effect unless assented to by the Governor.

With respect to the matters over which the District and Regional Councils are thus empowered to make laws, Acts of the State Legislature shall not extend to such Areas unless the relevant District Council so directs by public notification.⁵ As regards other matters, the President with respect to a

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Central Act and the Governor with respect to a State Act, may direct that an Act of Parliament or of the State Legislature shall not apply to an autonomous district or shall apply only subject to exceptions or modifications as he may specify in his notification.

These Councils shall also possess judicial power, civil and criminal, subject to the jurisdiction of the High Court as the Governor may from time to time specify.

REFERENCES

1. These States, in 1984, are—Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan [India 1984, p. 152].
2. Meghalaya was added by the North-Eastern Areas (Reorganisation) Act, 1971. Tripura by the Constitution (49th Amendment) Act, 1984 and Mizoram by State of Mizoram Act, 1986.
3. Para 3, Sixth Schedule.
4. Para 4, Sixth Schedule.
5. Paras 12, 12A, 12AA and 12B, Sixth Schedule.

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PART VII The Judicature

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CHAPTER 21 ORGANISATION OF THE JUDICIARY IN GENERAL

No Federal Distribution of Judicial Powers.

IT has already been pointed out, that notwithstanding the adoption of a federal system, the Constitution of India has not double system of Courts as in the United States. Under our Constitution there is a single integrated system of Courts for the Union as well as the States which administer both Union and State laws, and at the head of the entire system stands the Supreme Court of India. Below the Supreme Court stand the High Courts of the different States' and under each High Court there is a hierarchy of other Courts which are referred to in the Constitution as 'subordinate courts' i.e., courts subordinate to and under the control of the High Court [Arts. 233-237].

The organisation of the subordinate judiciary varies slightly from State to State, but the essential features may be explained with reference to Table XVI, post, which has been drawn with reference to the system obtaining in the majority of the States.

The Supreme Court has issued a direction² to the Union and the States to constitute an All India Judicial Service and to bring about uniformity in designation of officers both in criminal and civil side. Concrete steps in this directions are yet to be taken by the Government.

The hierarchy of Courts.

At the lowest stage, the two branches of justice,—civil and criminal,—are bifurcated. The Union Courts and the Bench Courts, constituted under the Village Self-Government Acts, which constituted the lowest civil and criminal Courts respectively, have been substituted by Panchayat Courts set up under post-Constitution State legislation. The Panchayat Courts also function on two sides, civil and criminal, under various regional names, such as the Nyaya Panchayal, Panchayat Adalat, Gram Kutchery , and the like. In some States, the Panchayat Courts, are the Criminal Courts of the lowest jurisdiction,³ in respect of petty cases.

The Munsiffs Courts are the next higher Civil Courts, having jurisdiction as determined by High Courts. Above the Munsiffs are Subordinate Judges who have got unlimited pecuniary jurisdiction over civil suits and hear first appeals from the judgments of Munsiffs. The District Judge hears first appeals from the decisions of Subordinate Judges and also from the Munsiffs (unless they are transferred to a Subordinate Judge) and himself possesses unlimited original

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jurisdiction, both civil and criminal. Suits of a small value are tried by the Provincial Small Causes Courts.

The District Judge is the highest judicial authority (civil and criminal) in the district. He hears appeals from the decisions of the superior Magistrates and also tries the more serious criminal cases, known as the Sessions cases. A Subordinate Judge is sometimes vested also with the powers of an Assistant Sessions Judge, in which case he combines in his hands both civil and criminal powers like a District Judge.³

Since the enactment of the Criminal Procedure Code, 1973, the trial of criminal cases is done exclusively by 'Judicial Magistrates', except in Jammu & Kashmir and Nagaland, to which that Code does not apply. The Chief Judicial Magistrate is the head of the Criminal Courts within the district. In Calcutta and other 'metropolitan areas', there are Metropolitan Magistrates.³ The Judicial and Metropolitan Magistrates, discharging judicial functions, under the administrative control of the State High Court, are to be distinguished from Executive Magistrates who discharge the executive function of maintaining law and order, under the control of the State Government.

There are special arrangements for civil judicial administration in the 'Presidency towns', which are now called 'metropolitan areas'. The Original Side of the High Court at Calcutta tries the bigger civil suits arising within the area of the Presidency town. Suits of lower value within the City are tried by the City Civil Court and the Presidency Small Causes Court. But the Original Criminal jurisdiction of all High Courts, including Calcutta, has been taken away by the Criminal Procedure Code, 1973.³

The High Court is the supreme judicial tribunal of the State,—having both Original and Appellate jurisdiction. It exercises appellate jurisdiction over the District and Sessions Judge, the Presidency Magistrates and the Original Side of the High Court itself (where the Original Side

still continues). There is a High Court for each of the States, except Manipur, Meghalaya, Tripura and Nagaland which have the High Court of Assam (at Gauhati) as their common High Court; and Haryana, which has a common High Court (at Chandigarh) with Punjab. The Bombay High Court is common to Maharashtra and Goa.

As regards the Judiciary in Union Territories, see under 'Union Territories'.

The Supreme Court has appellate jurisdiction over the High Courts and is the highest tribunal of the land. The Supreme Court also possesses original and advisory jurisdictions which will be fully explained hereafter (in Chap. 22).

REFERENCES

1. For a list of High Courts, their seat and territorial jurisdiction, see Table XVII.
2. All India Judges Assort, v. Union of India, A. 1992 S.C. 165.
3. See Author's Criminal Procedure Code, 1973 (Prentice-Hall of India, 2nd Ed., 1992), pp. 33 et seq.

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CHAPTER 22 THE SUPREME COURT

Constitution of the Supreme Court.

PARLIAMENT has the power to make laws regulating the constitution, organisation, jurisdiction and powers of the Supreme Court. Subject to such legislation, the Supreme Court consists of the Chief Justice of India and not more than twenty-five¹ other Judges [Art. 124].

Besides, the Chief Justice of India has the power, with the previous consent of the President, to request a retired Supreme Court Judge to act as a Judge of the Supreme Court for a temporary period. Similarly, a High Court Judge may be appointed ad hoc Judge of the Supreme Court for a temporary period if there is a lack of quorum of the permanent Judges [Arts. 127-128].

Appointment of Judges.

Every Judge of the Supreme Court shall be appointed by the President of India. The President shall, in this matter, consult other persons besides taking the advice of his Ministers. In the matter of appointment of the Chief Justice of India, he shall consult such Judges of the Supreme Court and of the High Courts as he may deem necessary. A nine-Judge Bench of the Supreme Court has laid down that the seniormost Judge of the Supreme Court considered fit to hold the office should be appointed to the office of Chief Justice of India.² And in the case of appointment of other Judges of the Supreme Court, consultation with the Chief Justice of India, in addition to the above, is obligatory [Art. 124(1)]. Consultation would generally mean

concurrence.² The above provision, thus, modifies the mode of appointment of Judges by the Executive—by providing that the Executive should consult members of the Judiciary itself, who are well-qualified to give their opinion in this matter.³

In a reference⁴ (not as a review or reconsideration of the Second Judges case) made by the President under Art. 143 relating to the consultation between the Chief Justice of India and his brother Judges in matters of appointment of the Supreme Court Judges and the relevance of seniority in making such appointments, the nine-Judge Bench opined:

1. The opinion of the CJI, having primacy in the consultative process and reflecting the opinion of the judiciary, has to be formed on the basis of consultation with the collegium, comprising of the CJI and the four senior most Judges of the Supreme Court. The Judge, who is to succeed the CJI should also be included, if he is not one of the four senior most Judges. Their views should be obtained in writing.

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2. Views of the senior most Judges of the Supreme Court, who hail from the High Courts where the persons to be recommended are functioning as Judges, if not the part of the collegium, must be obtained in writing.

3. The recommendation of the collegium alongwith the views of its members and that of the senior most Judges of the Supreme Court who hail from the High Courts where the persons to be recommended are functioning as Judges should be conveyed by the Chief Justice of India to the Govt. of India.

4. The substance of the views of the others consulted by the Chief Justice of India or on his behalf, particularly those of nonjudges (Members of the Bar) should be stated in the memorandum and be conveyed to the Govt. of India.

5. Normally, the collegium should make its recommendation on the basis of consensus but in case of difference of opinion no one would be appointed, if the CJI dissents.

6. If two or more members of the collegium dissent, CJI should not persist with the recommendation.

7. In case of non-appointment of the person recommended, the materials and information conveyed by the Govt. of India, must be placed before the original collegium or the reconstituted one, if so, to consider whether the recommendation should be withdrawn or reiterated. It is only if it unanimously reiterated that the appointment must be made.

8. The CJI may, in his discretion, bring to the knowledge of the person recommended the reasons disclosed by the Govt. of India for his non-appointment and ask for his response thereto, which, if made, be considered by the collegium before withdrawing or reiterating the recommendation.

9. Merit should be predominant consideration though inter-seniority among the Judges in their High Courts and their combined seniority on all India basis should be given weight.

10. Cogent and good reasons should be recorded for recommending a person of outstanding merit regardless of his lower seniority.

11. For recommending one of several persons of more or less equal degree of merit, the factor of the High Courts not represented on the Supreme Court, may be considered.

12. The Judge passed over can be reconsidered unless for strong reasons, it is recorded that he be never appointed.

13. The recommendations made by the CJI without complying with the norms and requirements, are not binding on die Govt. of India.

Qualifications for appointment as Judge.

A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is (a) a citizen of India; and (b) either, (i) a distinguished jurist; or (ii) has been a Judge. High Court Judge for at least 5 years; or (iii) has been an Advocate of a High Court (or two or more such

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Courts in succession) for at least 10 years [Art. 124(3)].

Tenure of Judges.

No minimum age is prescribed for appointment as a Judge of the Supreme Court, nor any fixed period of office. Once appointed, a Judge of the Supreme Court may cease to be so, on the happening of any one of the following contingencies (other than death):

(a) On attaining the age of 65 years; (b) On resigning his office by writing addressed to the President; (c) On being removed by the President upon an address to that effect being passed by a special majority of each House of Parliament (viz., a majority of the total membership of that House and by majority of not less than two-thirds of the members of that House present and voting).

The only grounds upon which such removal may take place are (1) 'proved misbehaviour' and (2) 'incapacity' [Art. 124(4)].

Impeachment of a Judge.

The combined effect of Art. 124(4) and the Judges (Inquiry) Act, 1968 is that the following procedure is to be observed for removal of a Judge, This is commonly known as impeachment—

(1) A motion addressed to the President signed by at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha is delivered to the Speaker or the Chairman.

(2) The motion is to be investigated by a Committee of three (2 Judges of the Supreme Court and a distinguished jurist).

(3) If the Committee finds the Judge guilty of misbehaviour or that he suffers from incapacity the motion (para 1, above) together with the report of the Committee is taken up for consideration in the House where the motion is pending.

(4) If the motion is passed in each House by majority of the total membership of that House and by a majority of not less than two-thirds of that House present and voting the address is presented to the President.

(5) The Judge will be removed after the President gives his order for removal on the said address.

The procedure for impeachment is the same for Judges of the Supreme Court and the High Courts. After the Constitution this procedure was started against SHRI R. RAMASWAMY in 1991-93. The Committee found the Judge guilty¹. In the Lok Sabha the Congress Party abstained from voting and so the motion could not be passed with requisite majority.

Salaries, etc.

A Judge of the Supreme Court gets a salary of Rs. 30,000 per mensem⁵ and the use of an official residence free of rent. The salary of the Chief Justice is Rs. 33,000.⁵

Independence of Supreme Court Judges, how secured.

The independence of the Judges of the Supreme Court is sought to be secured by the Constitution in a number of ways:

(a) Though the appointing authority is the President, acting with the advice of his Council of Ministers, the

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appointment of Supreme Court Judge has been lifted from the realm of pure politics by requiring the President to consult the Chief Justice of India in the matter.¹

(b) By laying down that a Judge of the Supreme Court shall not be removed by the President, except on a joint address by both Houses of Parliament (supported by a majority of the total membership and a majority of not less than two-thirds of the members present and voting, in each House), on ground of proved misbehaviour or incapacity of the Judge in question [Art. 124(4)].

This provision is similar to the rule prevailing in England since the Act of Settlement, 1701, to the effect that though Judges of the Superior Courts are appointed by the Crown, they do not hold office during his pleasure, but hold their office 'on good behaviour' and the Crown may remove them only upon a joint address from both Houses of Parliament.

(c) By fixing the salaries of the Judges by the Constitution and providing that though the allowances, leave and pension may be determined by law made by Parliament, these shall not be varied to the disadvantage of a Judge during his term of office. In other words, he will not be affected adversely by any changes made by law since his appointment [Art. 125(2)].

But it will be competent for the President to override this guarantee, under a Proclamation of 'Financial Emergency' [Art. 360(4)(b)].

(d) By providing that the administrative expenses of the Supreme Court, the salaries and allowances, etc., of the Judges as well as of the staff of the Supreme Court shall be 'charged upon the Consolidated Fund of India'; i.e., shall not be subject to vote in Parliament [Art. 146(3)].

(e) By forbidding the discussion of the conduct of a Judge of the Supreme Court (or of a High Court) in Parliament, except upon a motion for an address to the President for the removal of the Judge [Art. 121].

(f) By laying down that after retirement, a Judge of the Supreme Court shall not plead or act in any Court or before any authority within the territory of India⁶ [Art. 124(7)].

[It is to be noted that there are analogous provisions in the case of High Court Judges; see Chap. 23, post]

Position of the Supreme Court under the Constitution.

It has been rightly said that the jurisdiction and powers of our Supreme Court are in their nature and extent wider than those exercised by the highest Court of any other country.⁷ It is at once a federal Court, a Court of appeal and a guardian of the Constitution, and the law declared by it, in the exercise of any its jurisdictions under the Constitution, is binding on all other Courts within the territory of India [Art. 141].

Compared with the American Supreme Court.

Our Supreme Court possesses larger powers⁸ than the American Supreme Court in several respects—

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Firstly, the American Supreme Court's appellate jurisdiction is confined to cases arising out of the federal relationship or those relating to the constitutional validity of laws and treaties. But our Supreme Court is not only a federal court and a guardian of the Constitution, but also the highest

court of appeal in the land, relating to civil and criminal cases [Arts. 133-134], apart from cases relating to the interpretation of the Constitution.

Secondly, our Supreme Court has an extraordinary power to entertain appeal, without any limitation upon its discretion, from the decision not only of any court but also of any tribunal within the territory of India [Art. 136]. No such power belongs to the American Supreme Court.

Thirdly, while the American Supreme Court has denied to itself any power to advise the Government and confined itself only to the determination of actual controversies between parties to a litigation, our Supreme Court is vested by the Constitution itself with the power to deliver advisory opinion on any question of fact or law that may be referred to it by the President [Art. 143].

(i) As a Federal Court.

Every federal Constitution, whatever the degree of cohesion it aims at, involves a distribution of powers between the Union and the units composing the Union, and both Union and State Governments derive their authority from, and are limited by the same Constitution. In a unitary Constitution, like that of England, the local administrative or legislative bodies are mere subordinate bodies under the central authority. Hence, there is no need of judicially determining disputes between the central and local authorities. But in a federal Constitution, the powers are divided between the national and State Governments, and there must be some authority to determine disputes between the Union and the States or the States inter se and to maintain the distribution of powers as made by the Constitution.

Though our federation is not in the nature of a treaty or compact between the component units, there is, nevertheless, a division of legislative as well as administrative powers between the Union and the States. Article 131 of our Constitution, therefore, vests the Supreme Court with original and exclusive jurisdiction to determine justiciable disputes between the Union and the States or between the States inter se.⁸

(ii) As a Court of Appeal.

Like the House of Lords in England, the Supreme Court of India is the final appellate tribunal of the land, and in some respects, the jurisdiction of the Supreme Court is even wider than that of the House of Lords. As regards criminal appeals, an appeal lies to the House of Lords only if the Attorney-General certifies that the decision of the Court of Criminal Appeal involves a point of law of exceptional public importance and that it is desirable in the public interest that a further appeal should be brought. But in cases specified in Cls. (a) and (b) of Art. 134(1) of our Constitution (death sentences), an appeal will lie to the Supreme Court as of right.

As to appeals from High Courts in civil cases, however, the position has been altered by an amendment of Art 133(1) by the Constitution (30th

Amendment) Act, 1972, which has likened the law to that in England. Civil appeals from the decisions of the Court of Appeal lie to the House of Lords only if the Court of Appeal or the House of Lords grants leave to appeal. Under Art. 133(1) of our Constitution as it originally stood, an appeal to the Supreme Court lay as of right in cases of higher value (as certified by the High Court). But this value test and the category of appeal as of right has been abolished by the amendment of 1972, under which appeal from the decision of a High Court in a civil matter will lie to the Supreme Court only if the High Court certifies that the case involves 'a substantial question of law of general importance' and that 'the said question needs to be decided by the Supreme Court'.⁸

But the right of the Supreme Court to entertain appeal, by special leave, in any cause or matter determined by any Court or tribunal in India, save military tribunals, is unlimited [Art. 136].

(iii) As a Guardian of the Constitution.

As against unconstitutional acts of the Executive the jurisdiction of the Courts is nearly the same under all constitutional systems. But not so is the control of the Judiciary over the Legislature.

It is true that there is no express provision in our Constitution empowering the Courts to invalidate laws; but the Constitution has imposed definite limitations upon each of the organs of the state, and any transgression of those limitations would make the law void. It is for the Courts to decide whether any of the constitutional limitations has been transgressed or not,⁹ because the Constitution is the organic law subject to which ordinary laws are made by the Legislature which itself is set up by the Constitution.

Thus, Art. 13 declares that any law which contravenes any of the provisions of the Part on Fundamental Rights, shall be void. But, as our Supreme Court has observed,⁹ even without the specific provision in Art. 13 (which has been inserted only by way of abundant caution), the Court would have the powers to declare any enactment which transgresses a fundamental right as invalid.

Similarly, Art. 254 says that in case of inconsistency between Union and state laws in certain cases, the State law shall be void.

The limitations imposed by our Constitution upon the powers of Legislatures are—(a) Fundamental rights conferred by Part III. (b) Legislative competence, (c) Specific provisions of the Constitution imposing limitations relating to particular matters.¹⁰

It is clear from the above that (apart from the jurisdiction to issue the writs to enforce the fundamental rights, which has been explained earlier) the jurisdiction of the Supreme Court is three-fold: (a) Original; (b) Appellate; and (c) Advisor).

A. Original Jurisdiction of Supreme Court.

The Original jurisdiction of the Supreme Court is dealt with in Art. 131 of the Constitution. The functions of the Supreme and are confined to disputes between the Government of India and any of the States of the Union, the Government of India and any State or States on one side and

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any other State or States on the other side, or between two or more States inter se. In short, these are disputes between different units of the federation which will be within the exclusive original jurisdiction of the Supreme Court. The Original jurisdiction of the Supreme Court will be exclusive, which means that no other court in India shall have the power to entertain any such suit. On the other hand, the Supreme Court in its original jurisdiction will not be entitled to entertain any suit where both the parties are not units of the federation. If any suit is brought either against the State or the Government of India by a private citizen, that will not lie within the original jurisdiction of the Supreme Court but will be brought in the ordinary courts under the ordinary law.

Again, one class of disputes, though a federal nature, is excluded from this original jurisdiction of the Supreme Court, namely, a dispute arising out of any treaty, agreement, covenant, engagement; 'sanad' or other similar instrument which, having been entered into or executed before the commencement of this Constitution continues in operation after such commencement or which provides that the said jurisdiction shall not extend to such a dispute.¹¹ But these disputes may be referred by the President to the Supreme Court for its advisory opinion.

It may be noted that until 1962, no suit in the original jurisdiction had been decided by the Supreme Court. It seems that the disputes, if any, between the Union and the units or between the units inter se had so far been settled by negotiation or agreement rather than by adjudication. The first suit, brought by the State of West Bengal against the Union of India in 1961, to declare the unconstitutionality of the Coal Bearing Areas (Acquisition and Development) Act, 1957, was dismissed by the Supreme Court.¹²

In this context, it should be further noted that there are certain provisions in the Constitution which exclude from the original jurisdiction of the Supreme Court certain disputes, the determination of which is vested in other tribunals:

- (i) Disputes specified in the Proviso to Arts. 131 and 363(1).
- (ii) Complaints as to interference with inter-State water supplies, referred to the statutory tribunal mentioned in Art. 262, if Parliament so legislates.

Since Parliament has enacted the Inter-State Water Disputes Act (33 of 1956), Art. 262 has now to be read with s. 11 of that Act.

- (iii) Matters referred to the Finance Commission [Art. 280].
- (iv) Adjustment of certain expenses as between the Union and the States under Arts. 257(4), 258(3).

(v) Adjustment of certain expenses as between the Union and the States [Art. 290].

B. Writ Jurisdiction.

The jurisdiction of the Supreme Court to entertain an application under Art. 32 for the issue of a constitutional writ for the enforcement of Fundamental Rights, is sometimes treated as an 'original' jurisdiction of the Supreme

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Court. It is no doubt original in the sense that the party aggrieved has the right to directly move the Supreme Court by presenting a petition, instead of coming through a High Court by way of appeal. Nevertheless, it should be treated as a separate jurisdiction since the dispute in such cases is not between the units of the Union but an aggrieved individual and the Government or any of its agencies. Hence, the jurisdiction under Art 32 has no analogy to the jurisdiction under Art. 131.

C. Appellate Jurisdiction of Supreme Court.

The Supreme Court is the highest court of appeal from all courts in the territory of India, the jurisdiction of the Judicial Committee of the Privy Council to hear appeals from India having been abolished on the eve of the Constitution. The Appellate jurisdiction of the Supreme Court may be divided under three heads:

- (i) Cases involving interpretation of the Constitution,—civil, criminal or otherwise.
- (ii) Civil cases, irrespective of any constitutional question, (iii) Criminal cases, irrespective of any constitutional question.

Apart from appeals to the Supreme Court by special leave of that Court under Art. 136, an appeal lies to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in two classes of cases—

(A) Where the case involves a substantial question of law as to the interpretation of the Constitution, an appeal shall lie to the Supreme Court on the certificate of the High Court that such a question is involved or on the leave of the Supreme Court where the High Court has refused to grant such a certificate but the Supreme Court is satisfied that a substantial question of law as to the interpretation of the Constitution is involved in the case [Art. 132].

(B) In cases where no constitutional question is involved, appeal shall lie to the Supreme Court if the High Court certifies that the following conditions are satisfied [Art. 133(1)]—

- (i) that the case involves a substantial question of law;
- (ii) that in the opinion of the High Court the said question should be decided by the Supreme Court.

(i) Criminal.

Prior to the Constitution, there was no court of criminal appeal over the High Courts. It was only in a limited sphere that the Privy Council entertained appeals in criminal cases from the High Courts by special leave but there was no appeal as of right. Article 134 of the Constitution for the first time provides for an appeal to the Supreme Court

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from any judgment, final order or sentence in a criminal proceeding of a High Court, as of right, in two specified classes of cases—

- (a) where the High Court has on an appeal reversed an order of acquittal of an accused person and sentenced him to death;
- (b) where the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused and sentenced him to death.

In these two classes of cases relating to a sentence of death by the High Court, appeal lies to the Supreme Court as of right.

Besides the above two classes of cases, an appeal may lie to the Supreme Court in any criminal case if the High Court certifies that the case is a fit one for appeal to the Supreme Court. The certificate of the High Court would, of course, be granted only where some substantial question of law or some matter of great public importance or the infringement of some essential principles of justice are involved. Appeal may also lie to the Supreme Court (under Art. 132) from a criminal proceeding if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

Except in the above cases, no appeal lies from a criminal proceeding of the High Court to the Supreme Court under the Constitution but Parliament has been empowered to make any law conferring on the Supreme Court further powers to hear appeals from criminal matters.

(ii) Appeal by Special Leave.

While the Constitution provides for regular appeals to the Supreme Court from decisions of the High Courts in Arts. 132 to 134, there may still remain some cases where justice might require the interference of the Supreme Court with decisions not only of the High Courts outside the purview of Arts. 132- 134 but also of any other court or tribunal within the territory of India. Such residuary power outside the ordinary law relating to appeal is conferred upon the Supreme Court by Art. 136. This Article is worded in the widest terms possible—

"136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting special leave, against any kind of judgment or order made by any court or tribunal (except a military tribunal) in any proceeding and the exercise of the power is left entirely to the discretion of the Supreme Court unfettered by any restrictions and this power cannot be curtailed by any legislation short of amending the Article itself. This wide power is not, however, to be exercised by the Supreme Court so as to entertain an appeal in any case where no appeal is otherwise provided by the law or the Constitution. It is a special power which is to be exercised only under exceptional circumstances and the Supreme Court has already laid down the principles according to which this extraordinary power shall be used, e.g., where there has been a violation of the principles of natural justice. In civil cases the special leave to appeal under this Article would not be granted unless there is some substantial question of law or general public interest involved in the case. Similarly, in criminal cases the

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Supreme Court will not interfere under Art. 136 unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.¹³ Similarly, it will not substitute its own decision for the determination of a tribunal but it would interfere to quash the decision of a quasi-judicial tribunal under its extraordinary powers conferred by Art. 136 when the tribunal has either exceeded its jurisdiction or has approached the question referred to in a manner which is likely to result in injustice or has adopted a procedure which runs counter to the established rules of natural justice.¹⁴

D. Advisory jurisdiction.

Besides the above regular jurisdiction of the Supreme Court, it shall have an advisory jurisdiction, to give its opinion, on any question of law or tact of public importance as may be referred to it for consideration by the President.

Article 143 of the Constitution lays down that the Supreme Court may be required to express its opinion in two classes of matters, in an advisory capacity as distinguished from its judicial capacity :

(a) In the first class, any question of law may be referred to the Supreme Court for its opinion if the President considers that the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court. It differs from a regular adjudication before the Supreme Court in this sense that there is no litigation between two parties in such a case and that the opinion given by the Supreme Court on such a reference is not binding upon the Government itself and further that the opinion is not executable as a judgment of the Supreme Court. The opinion is only advisory and the Government may take it into consideration in taking any action in the matter but it is not bound to act in conformity with the opinion so received. The chief utility of such an advisory judicial opinion is to enable the Government to secure an authoritative opinion either as to the validity of a legislative measure before it is enacted or as to

some other matter which may not go to the courts in the ordinary course and yet the Government is anxious to have authoritative legal opinion before taking any action.

Up to 2000 there were ten cases of reference of this class made by the President.¹⁵⁻²³ It may be mentioned that though the opinion of the Supreme Court on such a reference may not be binding on the Government, the propositions of law declared by the Supreme Court even on such a reference are binding on the subordinate courts. In fact, the propositions laid down in the Delhi Laws case¹⁵ have been frequently referred to and followed since then by the subordinate courts. The Supreme Court is entitled to decline to answer a question posed to it under Art. 143 if it is superfluous or unnecessary.²²

(b) The second class of cases belong to the disputes arising out of pre-Constitution treaties and agreements which are excluded by Art. 131, Proviso, from the Original Jurisdiction of the Supreme Court, as we have already seen. In other words, though such disputes cannot come to the Supreme Court as a litigation under its Original jurisdiction, the subject-

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matter of such disputes may be referred to by the President for the opinion of the Supreme Court in its advisory capacity.

E. Miscellaneous Jurisdiction.

There are provisions for reference to this Court under Art. 317(1) of the Constitution, s. 257 of the Income-tax Act, 1961, s. 7(2) of the Monopolies and Restrictive Trade Practices Act, 1969, s. 130A of the Customs Act, 1962 and s. 35H of the Central Excise and Salt Act, 1944.

Appeals also lie to Supreme Court under the Representation of the People Act, Monopolies and Restrictive Trade Practices Act, Advocates Act, Contempt of Courts Act, Customs Act, Central Excise and Salt Act, Terrorist Affected Areas (Special Courts) Act, 1984 and Terrorist and Disruptive Activities (Prevention) Act, 1985.

Election Petitions under Part III of the Presidential and Vice-Presidential Elections Act, 1952 are also filed directly in the Supreme Court.

The 42nd, 43rd and 44th Amendments.

The jurisdiction of the Supreme Court, as outlined in the foregoing Pages, was curtailed by the 42nd Amendment of the Constitution (1976), in several ways. But some of these changes have been recoiled by the Janata Government, by repealing them by the 43rd Amendment Act, 1977, so that the reader need not bother about them. The provisions so repealed are Arts. 32A, 144A.

But there are several other provisions which were introduced by the 42nd Amendment Act, 1976, but the Janata Government failed to dislodge them, owing to the opposition of the Congress Party in the Rajya Sabha. These are—

(i) Art. 323A—323B. The intent of these two new Articles was to take away the jurisdiction of the Supreme Court under Art. 32 over orders and decisions of Administrative Tribunals. These Articles could, however, be implemented only by legislation which Mrs. Gandhi's first Government had no time to undertake.

Article 323A has been implemented by the Administrative Tribunals Act, 1985 [see, further, under Chap. 30, post].

But subsequently, the position turned out to be otherwise as the Supreme Court declared the Articles 323-A, Cl. 2(d) and 323-B, Cl. 3(d) and also the "exclusion of jurisdiction" clauses in all the legislations enacted in pursuance of these Articles, unconstitutional to the extent they excluded the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32.24

(ii) Art. 368(4)—(5). These two clauses were inserted in Art. 368 with a view to preventing the Supreme Court from invalidating any Constitution Amendment Act on the theory of 'basic features of Constitution' or anything °f that nature.

Curioulsy, however, these Clauses have been emasculated by the Supreme Court itself, striking them down on the ground that they are violative of two 'basic features' of the Constitution—(a) the limited nature of

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the amending power under Art. 368, and (b) judicial review,—in the Minerva Mills case.²⁵

REFERENCES

1. The Constitution provided for seven Judges besides the Chief Justice, subject to legislation by Parliament. Parliament has enacted the Supreme Court (Number of Judges) Acts, 1956 and 1986, raising this number to 25.

2. Supreme Court Advocates v. Union of India, (1993) 4 S.C.C. 441 (9Judge Bench).

3. VIII C.A.D. 258. But there is no such safeguard in the case of appointment of a Chief Justice, and when A.N. RAY, J., was appointed Chief Justice, after superseding three

senior Judges,- HEGDE, GROVER and SHELAT, there was an uproar in which the Supreme Court Bar Association joined, that the Senior Judges had been superseded solely because their judgment in Keshavananda's case (A. 1973 S.C. 1461) had been unfavourable to the Government.

Again in January 1977 instead of H.R. KHANNA,J., the seniormost Judge M.U. BEG, J. was made the Chief Justice of India. Justice KHANNA resigned just as the three Judges had done a few years back. It was said the supersession was because of his dissenting judgment in A.D.M. v. Shukla, A. 1976 S.C. 1207.

After the judgment referred to in f.n. 2 above viz. Supreme Court Advocates v. Union of India., it appears that discretion of the executive has been curtailed.

4. Special Reference No. 1 of 1998, Re :, (1998) 7 S.C.C. 739. The Bench expressed its optimistic view that the successive CJIs shall henceforth act in accordance with the Second Judges case and the opinion in the instant reference.

5. The salaries of Judges of the Supreme Court and the High Courts has been enhanced vide Act 18 of 1998, s. 7 (w.e.f. 1.1.1996).

6. But, curiously, there is no bar against a retired Judge from being appointed to any office under the Government [as there is in the case of the Comptroller and Auditor-General; Art. 148(4)]; and the expectation of such employment after retirement indirectly detracts from the independence of the Judges from executive influence. In fact, retired Judges have been appointed to hold offices such as that of Governor, Ambassador and the like, apart from membership of numerous Commissions or Boards.

7. Attorney-General of India (1956) S.C.R. 8; A.K. AIYAR, The Constitution and Fundamental Rights, 1955, p. 15.

8. Vide Author's Constitutional Law of India (Prentice-Hall of India, 1991), pp. 168 el. seq.

9. Gopalan v. Stale of Madras, (1950) S.C.R. 88 (700); Ref. Under Art. 143, A. 1965 S.C. 745 (762).

10. Vide Author's Constitutional Law of India, ibid., p. 270.

11. Article 131, Proviso, as amended by the Constitution (7th Amendment) Act, 1956.

12. State of West Bengal v. Union of India, A. 1963 S.C. 1241.

13. Pritam Singh v. Slate, A. 1950 S.C. 169.

14. D.C. Mills v. Commr. of IT., A. 1955 S.C. 65.

15. In re Delhi Laws Act, 1912 (1951) S.C.R. 747 [regarding the validity of the Delhi Laws Act, 1912].

16. Re Kerala Education Bill, A. 1958 S.C. 956 [regarding the constitutionality of the Kerala Education Bill].

17. Re Berubari Union, (1960) 3 S.C.R. 250 [regarding the procedure for implementation of the Indo-Pakistan Agreement relating to the Berubari Union].

18. In re Sea Customs, A. 1963 S.C. 1760 [regarding the constitutionality of the Sea Customs Amendment Bill, with reference to Art. 289 of the Constitution].

19. Special Reference I of 1964 (re. U.P. Legislature), A. 1965 S.C. 745.
20. In re Presidential Election, 1974, A. 1974 S.C. 1682.
21. In re Special Courts Bill, 1978, A. 1979 S.C. 478 (dated 1-12-1978).
22. In re Cauvery Waters Disputes Tribunal, A. 1992 S.C. 1183.
23. Ismail Faruqui v. Union of India, (1994) 6 S.C.C. 360 (Ramajanma Bhumi case).
24. L. Chandra Kumar v. Union of India, (1997) 3 S.C.C. 261 : A.I.R. 1997 S.C. 1125.
25. Minerva Mills v. Union of India, A. 1980 S.C. 1789 (paras 22-26, 28, 93-94).

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CHAPTER 23 THE HIGH COURT

The High Court of a State.

THERE shall be a High Court in each State [Art. 214] but Parliament has the Power to establish a common High Court for two or more States¹ [Art. 231]. The High Court stands at the head of the Judiciary in the State [see Table XVII].

Constitution of High Courts.

(a) Every High Court shall consist of a Chief Justice and such other Judges as the President of India may from time to time appoint.

(b) Besides, the President has the power to appoint (i) additional Judges for a temporary period not exceeding two years, for the clearance of arrears of work in a High Court; (ii) an acting Judge, when a permanent Judge of a High Court (other than a Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice. The acting Judge holds office until the permanent Judge resumes his office. But neither an additional nor an acting judge can hold office beyond the age of 62 years.²

Appointment and Conditions of the Office of a Judge of a High Court.

Every Judge of a High Court shall be appointed by the President. In making the appointment, the President shall consult Chief Justice of India, the Governor of the State (and also the Chief Justice of that High Court in the matter of appointment of a Judge other than the Chief Justice).

Participatory Consultative Process.—A nine-Judge Bench of the Supreme Court³ has held that (1) the process of the appointment of the Judges of the High Courts is an integrated 'participatory consultative process' for selecting the best and most suitable persons available for appointment;

and all the constitutional functionaries must perform this duty collectively with a view primarily to reach an agreed decision, subserving the constitutional purpose, so that the occasion of primacy does not arise.

(2) Initiation of the proposal for appointment in the case of High Court must invariably be made by the Chief Justice of that High Court.

(3) In the event of conflicting opinions by the constitutional functionaries, the opinion of the judiciary 'symbolised by the view of the Chief Justice of India' formed by him in consultation with two senior most Judges of the Supreme Court who come from that State, would have supremacy.

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(4) No appointment of any Judge of a High Court can be made unless it is in conformity with the opinion of the Chief Justice of India.

(5) In exceptional cases alone, for stated strong cogent reasons, disclosed to the Chief Justice of India, indicating that the recommendee is not suitable for appointment, that the appointment recommended by the Chief Justice of India may not be made. However, if the stated reasons are not accepted by the CJI and the other Judges of the Supreme Court, consulted by him in the matter, on reiteration of the recommendation by the CJI, the appointment should be made as a healthy convention.

Subsequently, the President of India in exercise of his powers under Art. 143 made a Reference⁴ to the Supreme Court relating to the consultation between the CJI and his brother Judges in matters of appointments of the High Court Judges, but not as a review or reconsideration of the Supreme Court Advocates case [Second Judges case] above. The S.C. opined that "consultation with the CJI" implies consultation with a plurality of Judges in the formation of opinion. His sole opinion does not constitute consultation. Only a collegium comprising the CJI and two senior most Judges of the S.C., as was in the Second Judges case above, should make the recommendation. The collegium in making its decision should take into account the opinion of the CJI of the High Court concerned which "would be entitled to the greatest weight," the views of the other Judges of the High Court who may be consulted and the views of the other Judges of the S.C. "who are conversant with the affairs of the High Court concerned." The views of the Judges of the S.C. who were puisne Judges of the High Court or CJ., thereof, will also be obtained irrespective of the fact that the H.C. is not their parent H.C. and they were transferred there. All these views should be expressed in writing and be conveyed to the Govt. of India alongwith the recommendation of the collegium. The recommendations made by the CJI without complying with the norms and requirements of the consultation process, as aforesaid, are not binding upon the Govt. of India.

Judicial review would be available if the aforesaid procedure is not followed or the appointee is found to lack eligibility.

A Judge of the High Court shall hold office until the age of 62 years.²

Every Judge,—permanent, additional or acting,—may vacate his office earlier in any of the following ways—

- (i) By resignation in writing addressed to the President.
- (ii) By being appointed a Judge of the Supreme Court or being transferred to any other High Court, by the President.
- (iii) By removal by the President on an address of both Houses of Parliament (supported by a majority of the total membership of that house and by the vote of not less than 2/3 of the members present), on the ground of proved misbehaviour or incapacity. The mode of removal of a Judge of the High Court shall thus be the same as that of a Judge of the Supreme Court, and both shall hold office during 'good behaviour' [Art. 217(1)]. This procedure is known as impeachment and is the same as that for a Judge of

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the Supreme Court. [For details, see Chap. 22 under, "Impeachment of a Judge".]

Salaries, etc.

A Judge of a High Court gets a salary of Rs. 26,000/- per mensem while the Chief Justice gets Rs. 30,000/- per mensem.⁵ He is also entitled to such allowances and rights in respect of leave and pension as Parliament may from time to time determine, but such allowances and rights cannot be varied by Parliament to the disadvantage of a judge after his appointment [Art. 221].

Qualifications for Appointment as High Court Judge.

The qualifications laid down in the Constitution for being eligible for appointment as a judge of the High Court are that— (a) he must be a citizen of India, not being over 62 years; and must have (b) (i) held for at least 10 years a judicial office in the territory of India; or

(ii) been for at least 10 years an advocate of a High Court or of two or more such Courts in succession [Art. 217(2)].

Independence of the Judges.

As in the case of the Judges of the Supreme Court, the Constitution seeks to maintain the independence of the Judges of the High Courts by a number of provisions:

- (a) By laying down that a Judge of the High Court shall not be removed, except in the manner provided for the removal of a Judge of the Supreme Court, that is, upon an address of each House of Parliament (passed by a special majority [Art. 218];
- (b) By providing that the expenditure in respect of the salaries and allowances of the Judges shall be charged on the Consolidated Fund of the State [Art. 202(3)(d)];

(c) By specifying in the Constitution the salaries payable to the Judges and providing that the allowances of a Judge or his rights in respect of absence or pension shall not be varied by Parliament to his disadvantage after his appointment [Art. 221], except under a Proclamation of Financial Emergency [Art. 360(4)(b)];

(d) By laying down that after retirement a permanent Judge of High Court shall not plead or act in a Court or before any authority in India, except the Supreme Court and a High Court other than the High Court in which he had held his office [Art. 220].

Control of the Union over High Courts.

As Sir Alladi Krishnaswami explained in the Constituent Assembly,⁶ while ensuring the independence of the Judiciary, the Constitution placed the High Courts under the control of the Union in certain important matters, in order to keep them outside the range of 'provincial polities'.

Thus, even though the High Court stands at the head of the State Judiciary, it is not so sharply separated from the federal Government as the highest Court of an American State (called the State Supreme Court) is. The control of the Union over a High Court in India is exercised in the following matters;

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(a) Appointment [Art. 217], transfer⁷ from one High Court to another [Art. 222] and removal [Art. 217(1), Prov. (b)], and determination of dispute as to age [Art. 217(3)], of Judges of High Courts.

Transfer.—Now the power to transfer of the High Court Judges remains no more a method of control over the High Court by the Union Government as the Supreme Court has prescribed a procedure for the purpose in a Reference⁸ made by the President of India in exercise of his powers under Art. 143. The Supreme Court opined that the Chief Justice of India should obtain the views of the Chief Justice of the High Court from which the proposed transfer is to be effected as also that of the Chief Justice of the High Court to which the transfer is to be effected (as was stated in the Second Judges case in 1993). The Chief Justice of India should also take into account the views of one or more Supreme Court Judges who are in position to provide material which would assist in the process of deciding whether or not a proposed transfer should take place. These views should be expressed in writing and should be considered by CJI and the four senior most puisne Judges of the Supreme Court. These views and those of each of the four senior most Judges should be conveyed to the Govt. of India with the proposal of transfer.

What applies to the transfer of puisne Judges of a H.C. applies as well to the transfer of the Chief Justice of a High as a CJ. of another H.C. except that in this case, only the views of one or more knowledgeable Judges need be taken into account.

These factors, including the response of the High Court Chief Justice or the puisne Judge proposed to be transferred, to the proposal to transfer him, should be placed before the

collegium—the CJI and his first four puisne Judges—to be taken into account by it before reaching a final conclusion on the proposal.

Unless the decision to transfer has been taken in the manner aforesaid, it is not decisive and does not bind the Govt. of India and shall be subject to judicial review.

(b) The constitution and organisation of High Courts and the power to establish a common High Court for two or more States and to extend the jurisdiction of a High Court to, or to exclude its jurisdiction from, a Union Territory, are all exclusive powers of the Union Parliament.

It should be pointed out in the present context that there are some provisions introduced into the original Constitution by subsequent amendments, which affect the independence of High Court Judges, as compared with Supreme Court Judges :

(a) Art. 224 was introduced by substitution, in 1956, to provide for the appointment of additional Judges to meet 'any temporary increase in the business of a High Court'. An additional Judge, so appointed, holds office for two years, but he may be made permanent at the end of that term. There is no such corresponding provision for the Supreme Court. It was introduced in the case of the High Courts because of the problem of arrears of work, which was expected to disappear in the near future. Now that the problem of arrears has become a standing problem which is being met by

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the addition of more Judges, there is no particular reason why the make-shift device of additional appointment should continue. The inherent vice of this latter device is that it keeps an additional Judge on probation and under the tutelage of the Chief Justice as well as the Government⁷ as to whether he would get a permanent appointment at the end of two years. So far as the judicial power of a High Court Judge is concerned, he ranks as an equal to every other member of a Bench and is not expected, according to any principle relating to the administration of justice, to 'agree' with the Chief Justice or any other senior member of a Bench where his learning, conscience or wisdom dictates otherwise, or to stay his hands where the merits of a case require a judgment against the Government. The fear of losing his job on the expiry of two years obviously acts as an inarticulate obsession upon an additional Judge.

(b) Similarly, Cl.(3) was inserted in Art. 217 in 1963, giving the President, in consultation with the Chief Justice of India, the final power to determine the age of High Court Judge, if any question is raised by anybody in that behalf. By the same amendment of 1963 (15th Amendment), Cl.(2A) was inserted in Art. 124, laying down that a similar question as to the age of a Supreme Court Judge shall be determined in such manner as Parliament may by law provide. A High Court Judge's position has thus become not only unnecessarily inferior to that of a Supreme Court Judge but even to that of a subordinate Judicial Officer, because any administrative determination of the latter's age is open to challenge in a Court of law, but in the case of a High Court Judge, it is made 'final' by the Constitution itself.⁹ There is, apparently, no impelling reason why a provision similar to Cl. (2A) to Art. 124 shall not be introduced in Art. 217, in place of Cl. (3), in question.

(c) Another agency of control over High Court Judges is the provision in Art. 221(1) for their transfer from one High Court to another, which has been given a momentum in 1994 by transferring as many as 50 Judges at a time.¹⁰ In order that the power of the President to order such transfer is not used as a punitive measure, the Supreme Court has laid down¹¹ that while no consent of the Judge concerned would be required, the President would not be competent to exercise the power except on the recommendation of the Chief Justice of India.

Territorial Jurisdiction of High Court.

Except where Parliament establishes a common High Court for two or more States [Art. 231] or extends the jurisdiction of a High Court to a Union Territory, the jurisdiction of the High Court of a State is co-terminous with the territorial limits of that State.¹²

As has already been stated, Parliament has extended the jurisdiction of some of the High Courts to their adjoining Union Territories, by enacting the States Reorganisation Act, 1956. Thus, the jurisdiction of the Calcutta High Court extends to the Andaman and Nicobar Islands; that of the Kerala High Court extends to the Lakshadweep [see Table XVIII].

Ordinary Jurisdiction of High Courts.

The Constitution does not make any provision relating to the general jurisdiction of the High Courts, but maintains their jurisdiction as it existed at the

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commencement of the Constitution, with this improvement that any restrictions upon their jurisdiction as to revenue matters that existed prior to the Constitution shall no longer exist [Art. 225].

The existing jurisdictions of the High Courts are governed by the Letters Patent and Central and State Acts; in particular, their civil and criminal jurisdictions are primarily governed by the two Codes of Civil and Criminal Procedure.

(a) Original.

(a) The High Courts at the three Presidency towns of Calcutta, Bombay and Madras had an original jurisdiction, both civil and criminal, over cases arising within the respective Presidency towns. The original criminal jurisdiction of the High Courts has, however, been completely taken away by the Criminal Procedure Code, 1973.¹³

Though City Civil Courts have also been set up to try civil cases within the same area, the original civil jurisdiction of these High Courts has not altogether been abolished but retained in respect of actions of higher value.

(b) The appellate jurisdiction of the High Court, similarly, is both civil and criminal.

(b) Appellate.

- (I) On the civil side, an appeal to the High Court is either a First appeal or a Second appeal.
- (i) Appeal from the decisions of District Judges and from those of Subordinate Judges in cases of a higher value (broadly speaking), lie direct to the High Court, on questions of fact as well as of law.
 - (ii) When any Court subordinate to the High Court (i.e., the District Judge or Subordinate Judge) decides an appeal from the decision of an inferior Court, a second appeal lies to the High Court from the decision of the lower appellate Court, but only on question of law and procedure, as distinguished from questions of fact [s. 100, C.P. Code].
 - (iii) Besides, there is a provision for appeal under the Letters Patent of the Allahabad, Bombay, Calcutta, Madras and Patna High Courts. These appeals lie to the Appellate Side of the High Court from the decision of a single Judge of the High Court itself, whether made by such judge in the exercise of the original or appellate jurisdiction of the High Court.
- (II) The criminal appellate jurisdiction of the High Court is not less complicated. It consists of appeals from the decisions of—

- (a) A Sessions Judge or an Additional Sessions Judge, where the sentence is of imprisonment exceeding seven years;
- (b) An Assistant Sessions Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than 'petty' cases [ss. 374, 376, 376G, Cr.P.C, 1973]

High Court's Power of superintendence.

Every High Court has a power of superintendence over all Courts and tribunals throughout the territory in relation to which it exercises jurisdiction, excepting military tribunals [Art. 227]. This power of superintendence is a very wide power inasmuch as it extends to all Courts as

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well as tribunals within the State, whether such Court or tribunal¹² is subject to the appellate jurisdiction of the High Court or not. Further, this power of superintendence would include a revisional jurisdiction to intervene in cases of gross injustice or non-exercise or abuse of jurisdiction or refusal to exercise jurisdiction, or in case of an error of law apparent on the face of the record, or violation of the principles of natural justice, or arbitrary or capricious exercise of authority, or discretion or arriving at a finding which is perverse or based on no material, or a flagrant or patent error in procedure, even though no appeal or revision against the orders of such tribunal was otherwise available.

Jurisdiction over Administrative Tribunals.

By reason of the extension of Governmental activities and the complicated nature of issues to be dealt with by the administration, many modern statutes have entrusted administrative bodies with the function of deciding disputes and quasi-judicial issues that arise in connection with the administration of such laws, either because the ordinary courts are already overburdened to take up these new matters or the disputes are of such a technical nature that they can be decided only by persons who have an intimate knowledge of the working of the Act under which it arises. Thus, in India, quasi-judicial powers have been vested in administrative authorities such as the Transport Authorities under the Motor Vehicles Act; the Rent Controller under the State Rent Control Acts. Besides, there are special tribunals which are not a part of the judicial administration but have all the 'trappings' of a court. Nevertheless, they are not courts in the proper sense of the term, in view of the special procedure followed by them. All these tribunals have one feature in common, viz. that they determine questions affecting the rights of the citizens and their decisions are binding upon them.

Since the decisions of such tribunals have the force or effect of a judicial decision upon the parties, and yet the tribunals do not follow the exact procedure adopted by courts of justice, the need arises to place them under the control of superior courts to keep them within the proper limits of their jurisdiction and also to prevent them from committing any act of gross injustice.

In England, judicial review over the decisions of the quasi-judicial tribunals is done by the High Court in the exercise of its power to issue the prerogative writs.

In India, there are several provisions in the Constitution which place these tribunals under the control and supervision of the superior courts of the land, viz., the Supreme Court and the High Courts :

(i) If the tribunal makes an order which infringes a fundamental right of a person, he can obtain relief by applying for a writ of certiorari to quash that decision, either by applying for it to the Supreme Court under Art. 32 or to the High Court under Art. 226. Even apart from the infringement of the fundamental right, a High Court is competent to grant a writ of certiorari, if the tribunal either acts without jurisdiction or in excess of its jurisdiction as conferred by the statutes by which it was created or it makes an order

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contrary to the rules of natural justice or where there is some error of law apparent on the face of its record.

(ii) Besides the power of issuing the writs, every High Court has a general power of superintendence over all the tribunals functioning within its jurisdiction under Art. 227 and this superintendence has been interpreted as both administrative and judicial superintendence. Hence, even where the writ of certiorari is not available but a flagrant injustice has been committed or is going to be committed, the High Court may interfere and quash the order of a tribunal under Art. 227.14

(iii) Above all, the Supreme Court may grant special leave to appeal from any determination made by any tribunal in India, under Art. 136 wherever there exist extraordinary circumstances calling for interference of the Supreme Court. Broadly speaking, the Supreme Court can exercise this power under Art. 136 over a tribunal wherever a writ for certiorari would lie against the tribunal; for example, where the tribunal has either exceeded its jurisdiction or has approached the question referred to it in a manner which is likely to result in injustice or has adopted a procedure which runs counter to the established rules of natural justice. The extraordinary power would, however, be exercised by the Supreme Court in rare and exceptional circumstances and not to interfere with the decisions of such tribunals as a court of appeal.

The Writ Jurisdiction of Supreme Court and High Court.

Besides the above, the Supreme Court as well as the High Courts possess what may be called an extraordinary jurisdiction, under Arts. 32 and 226 of the Constitution, respectively, which extends not only to inferior courts and tribunals but also to the State or any authority or person, endowed with State authority. The peculiarity of this jurisdiction is that being conferred by the Constitution, it cannot be taken away or abridged by anything short of an amendment of the Constitution itself. As has already been pointed out, the jurisdiction to issue writs under these Articles is larger in the case of High Court inasmuch as while the Supreme Court can issue them only where a fundamental right has been infringed, a High Court can issue them not only in such cases but also where an ordinary legal right has been infringed, provided a writ is a proper remedy in such cases, according to well-established principles.

Public interest litigation.—Following English and American decisions, our Supreme Court has admitted exceptions from the strict rules relating to affidavit locus standi and the like in the case of a class of litigations, classified as 'public interest litigation' (PIL) i.e., where the public in general are interested in the vindication of some right or the enforcement of some public duty.¹⁵ The High Courts also have started following this practice in their jurisdiction under Art. 226,¹⁶ and the Supreme Court has approved this practice, observing that where public interest is undermined by an arbitrary and perverse executive action, it would be the duty of the High Court to issue a writ.¹⁷

The Court must satisfy itself that the party bringing the PIL is litigating bona fide for public good. It should not be merely a cloak for attaining

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private ends of a third party or of the party bringing the petition. The court can examine the previous records of public service rendered by the litigant.¹⁸ An advocate filed a writ petition against the State or its instrumentalities seeking not only compensation to a victim of rape committed by its employees (the railway employees) but also so many other relief's including eradication of anti-social and criminal activities at the railway stations. The Supreme Court held that the petition was in the nature of a PIL and the advocate could bring in the same for which no personal injury or loss is an essential element.¹⁹

Control over Subordinate Courts.

As the head of the Judiciary in the State, the High Court has got an administrative control over the subordinate judiciary in the State in respect of certain matters, besides its appellate and supervisory jurisdiction over them. The Subordinate Courts include District Judges, Judges of the City Civil Courts as well as the Metropolitan Magistrates and members of the judicial service of the State.

The control over the Judges of these Subordinate Courts is exercised by the High Courts in the following matters—

- (a) The High Court is to be consulted by the Governor in the matter of appointing, posting and promoting District Judges [Art. 233].
- (b) The High Court is consulted, along with the State Public Service Commission, by the Governor in appointing persons (other than District Judges) to the judicial service of the State [Art. 234].
- (c) The control over district courts and courts subordinate thereto, including the posting and promotion of, and the grant of leave to, transfers of, disciplinary control over including inquiries, suspension and punishment, and compulsory retirement of, persons belonging to the judicial service and holding any post inferior to the post of a district judge is vested in High Court [Art. 235].

Control over the subordinate courts is the collective and individual responsibility of the High Court.²⁰

The 42nd, 43rd and 44th Amendments.

The foregoing survey of the jurisdiction of a High Court under the original Constitution was drastically curtailed in various ways, by the Constitution (42nd Amendment) Act, 1976, which has been referred to at the end of Chap. 22 ante, in the context of the Supreme Court, but the new provisions in Arts. 226A and 228A which had been inserted by the Constitution (42nd Amendment) Act, 1976, have all been omitted by the 43rd Amendment Act, 1977, and the original position has been restored.

In this context, we must mention Arts. 323A-323B, inserted by the 42nd Amendment Act.

Parliament has passed the Administrative Tribunals Act, 1985, implementing Art. 323A, under which the Central Government has set up Central Administrative Tribunals with respect to services under the Union.

As a result, all Courts of law including the High Court shall cease to have any jurisdiction to entertain any litigation relating to the recruitment

and other service matters relating to persons appointed to the public services of the Union, whether in its original or appellate jurisdiction. The Supreme Court has, however, been spared its special leave jurisdiction of appeals from these Tribunals, under Art. 136 of the Constitution. But subsequently, the position turned out to be otherwise as the Supreme Court declared the Articles 323-A, Cl. 2(d) and 323-B, Cl. 3(d) and also the "exclusion of jurisdiction" clauses in all the legislations enacted in pursuance of these Articles, unconstitutional to the extent they excluded the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32.21

REFERENCES

1. Under this provision, the High Court of Assam (at Gauhati) is the common High Court for Assam, Nagaland, Manipur, Meghalaya, Tripura, Arunachal Pradesh and Mizoram [Table XVIII]; and the Bombay High Court serves both Maharashtra and Goa.
2. By the Constitution (15th Amendment) Act, 1963, the age of retirement of High Court Judges has been raised from 60 to 62.
3. Supreme Court Advocates v. Union of India, (1993) 4 S.C.C. 441.
4. Special Reference No. 7 of 1998, Re : (1998) 7 S.C.C. 739 [9 Judge Bench].
5. This is the salary as enhanced vide Act 18 of 1998, s. 7 (w.e.f. 1.1.1996).
6. C.A.D., dated 22-11-1948.
7. Cf. Gupta v. President of India, A. 1982 S.C. 149 (7 Judge Bench).
8. Special Reference No. 1 of 1998, Re :, (1998) 7 S.C.C. 739.
9. In this context, see Union of India v. Jyoti Prakash, A. 1971 S.C. 1093, and the comments of the author thereon, at pp. 246ff. of Vol. G of the Author's Commentary on the Constitution of India (6th Ed.)
10. Statesman, Calcutta, 14-4-1994, 16-4-1994 (p. 5).
11. S.C. Advocates v. Union of India, (1993) 4 S.C.C. 441 (para 472)—9 Judge Bench.
12. See Table XVII as to the territorial jurisdiction of the several High Courts. Delhi which was under the jurisdiction of the Punjab High Court has now its own High Court since 1996.
13. BASU'S Criminal Procedure Code (Prentice-Hall of India, 1979), p. 29.
14. The 42nd Amendment Act, 1976, also took away this jurisdiction of the High Courts over tribunals, under Art. 227(1), by omitting the word 'tribunals' therefrom; but the 44th Amendment Act, 1978, has restored the word, so that a High Court retains its power of superintendence over any tribunal within its territorial jurisdiction. This jurisdiction of the High Court was taken away

in respect of Administrative Tribunals set up under Art. 323A, by the Administrative Tribunals Act, 1985 but the provisions in these Articles and in the legislations enacted in pursuance thereof excluding the jurisdiction of S.C. and H.C.s under Arts. 32 and 226/227 have been declared to be unconstitutional by the Supreme Court in L Chandra Kumar v. U.O.I., (1997) 3 S.C.C. 261 : A.I.R. 1997 S.C. 1125.

15. People's Union v. Union of India, A.I.R. 1982 S.C. 1473 (para 1).
16. State of W.B. v. Sampal, A.I.R. 1985 S.C. 195 (para 10).
17. Chaitanya v. State of Karnataka, A.I.R. 1986 S.C. 825 (para 10).
18. Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 S.C.C. 492 (para 12) : A.I.R. 1999 S.C. 393.
19. Chairman, Railway Board v. Chandrima Das, (2000) 2 S.C.C. 465.
20. High Court of Judicature at Bombay v. Shirish Kumar Rangrao Patil,(1997) 6 S.C.C. 339.
21. L Chandra Kumar v. Union of India,(1997) 3 S.C.C. 261 : A.I.R. 1997 S.C. 1125.

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PART VIII The Federal System

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CHAPTER 24 DISTRIBUTION OF LEGISLATIVE AND EXECUTIVE POWERS

Nature of the Union.

THE nature of the federal system introduced by our Constitution has been fully explained earlier (Chap. 5).

To recapitulate its essential features: Though there is a strong admixture of unitary bias and the exceptions from the traditional federal scheme are many, the Constitution introduces a federal system as the basic structure of government of the country. The Union at the end of 2000, is composed of 28 States¹ and both the Union and the States derive their authority from the Constitution which divides all powers,—legislative, executive and financial, as between them. [The judicial powers, as already pointed out (Chap. 22), are, not divided and there is a common Judiciary for the Union and the States.] The result is that the States are not delegates of the Union and that, though there are agencies and devices for Union control over the States in many matters,—subject to such exceptions, the States are autonomous within their own spheres as

allotted by the Constitution, and both the Union and the States are equally subject to the limitations imposed by the Constitution, say, for instance, the exercise of legislative powers being limited by Fundamental Rights.

Thus, neither the Union Legislature (Parliament) nor a State Legislature can be said to be 'sovereign' in the legalistic sense,—each being limited by the provisions of the Constitution effecting the distribution of legislative powers as between them, apart from the Fundamental Rights and other specific provisions restraining their powers in certain matters, e.g., Art. 276(2) [limiting the power of a State Legislature to impose a tax on professions]; Art. 303 [limiting the powers of both Parliament and a State Legislature with regard to legislation relating to trade and commerce]. If any of these constitutional limitations is violated, the law of the Legislature concerned is liable to be declared invalid by the Courts.

The Scheme of Distribution of Legislative Powers.

As has been pointed out at the outset, a federal system postulates a distribution of powers between the federation and the units. Though the nature of distribution varies according to the local and political background in each country, the division, obviously, proceeds on two lines—

- (a) The territory over which the Federation and the Units shall, respectively, have their jurisdiction.
- (b) The subjects to which their respective jurisdiction shall extend.

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The distribution of legislative powers in our Constitution under both heads is as follows:

Territorial Extent of Union and State Legislation.

I. As regards the territory with respect to which the Legislature may legislate, the State Legislature naturally suffers from a limitation to which Parliament is not subject, namely, that the territory of the Union being divided amongst the States, the jurisdiction of each State must be confined to its own territory. When, therefore, a State Legislature makes a law relating to a subject within its competence, it must be read as referring to persons or objects situated within the territory of the State concerned. A State Legislature can make laws for the whole or any part of the State to which it belongs [Art. 245(1)]. It is not possible for a State Legislature to enlarge its territorial jurisdiction under any circumstances except when the boundaries of the State itself are widened by an Act of Parliament.

Parliament has, on the other hand, the power to legislate for 'the whole or any part of the territory of India', which includes not only the States but also the Union Territories or any other area, for the time being, included in the territory of India [Art. 246(4)]. It also possesses the power of 'extraterritorial legislation' [Art. 245(2)], which no State Legislature possesses. This means that laws made by Parliament will govern not only persons and property within the territory of India but also Indian subjects resident and their property situated anywhere in the world. No such

power to affect persons or property outside the borders of its own State can be claimed by a State Legislature in India.

Limitations to the Territorial Jurisdiction of Parliament.

The plenary territorial jurisdiction of Parliament is, however, subject to some special provisions of the Constitution—

- (i) As regards some of the Union Territories, such as the Andaman and Lakshadweep group of Islands, Regulations may be made by the President to have the same force as Acts of Parliament and such Regulations may repeal or amend a law made by Parliament in relation to such Territory [Art. 240(2)].²
- (ii) The application of Acts of Parliament to any Scheduled Area may be barred or modified by notifications made by the Governor [Para 5 of the 5th Schedule].²
- (iii) Besides, the Governor of Assam may, by public notification, direct that any other Act of Parliament shall not apply to an autonomous district or an autonomous region in the State of Assam or shall apply to such district or region or part thereof subject to such exceptions or modifications as he may specify in the notification [Para 12(l)(b) of the 6th Sch.].³ Similar power has been vested in the President as regards the autonomous district or region in Meghalaya, Tripura and Mizoram by Paras 12A, 12AA and 12B of the 6th Schedule.

It is obvious that the foregoing special provisions have been inserted in view of the backwardness of the specified areas to which the indiscriminate application of the general laws might cause hardship or other injurious consequences.

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Distribution of Legislative Subjects.

II. As regards the subjects of legislation, the Constitution adopts from the Government of India Act, 1935, a threefold distribution of legislative powers between the Union and the States [Art. 246]. While in the United States and Australia, there is only a single enumeration of powers,—only the powers of the Federal Legislature being enumerated,—in Canada there is a double enumeration, and the Government of India Act, 1935, introduced a scheme of threefold enumeration, namely, Federal, Provincial and Concurrent. The Constitution adopts this scheme from the Act of 1935 by enumerating possible subjects of legislation under three Legislative Lists in Sch. VII of the Constitution (see Table XIX).⁴

List I or the Union List includes (in 2000) 99 subjects over which the Union shall have exclusive power of legislation. These include defence, foreign affairs, banking, insurance, currency and coinage, Union duties and taxes.

List II or the State List comprises 61 items or entries over which the State Legislature shall have exclusive power of legislation, such as public order and police, local government, public health and sanitation, agriculture, forests, fisheries, State taxes and duties.

List III gives concurrent powers to the Union and the State Legislatures over 52 items, such as Criminal law and procedure, Civil procedure, marriage, contracts, torts, trusts, welfare of labour, economic and social planning and education.

In case of overlapping of a matter as between the three Lists, predominance has been given to the Union Legislature, as under the Government of India Act, 1935. Thus, the power of the State Legislature to legislate with respect to matters enumerated in the State List has been made subject to the power of Parliament to legislate in respect of matters enumerated in the Union and Concurrent Lists, and the entries in the State List have to be interpreted accordingly.

In the concurrent sphere, in case of repugnancy between a Union and a State law relating to the same subject, the former prevails. If, however, the State law was reserved for the assent of the President and has received such assent, the State law may prevail notwithstanding such repugnancy, but it would still be competent for Parliament to override such State law by subsequent legislation [Art. 254(2')].⁵

Residuary Powers.

The vesting of residual power under the Constitution follows the precedent of Canada, for, it is given to the Union instead of the States (as in the U.S.A. and Australia). In this respect, the Constitution differs from the Government of India Act, 1935, for, under that Act, the residual powers were vested neither in the Federal nor in the State Legislature, but were placed in the hands of the Governor-General; the Constitution vests the residuary power, i.e., the power to legislate with respect to any matter not enumerated in any one of the three Lists,—in the Union legislature [Art. 248],⁶ and the final determination as to whether a particular matter falls under the residuary power or not is that of the Courts.

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It should be noted, however, that since the three Lists attempt at an exhaustive enumeration of all possible subjects of legislation, and the Courts interpret the ambit of the enumerated powers liberally, the scope for the application of the residuary power will be very narrow.⁷

Expansion of the Legislative Powers of the Union under different circumstances.

While the foregoing may be said to be an account of the normal distribution of the legislative powers, there are certain exceptional circumstances under which the above system of distribution is either suspended or the powers of the Union Parliament are extended over State subjects. These exceptional or extraordinary circumstances are—

- (a) In the National Interest. Parliament shall have the power to make laws with respect to any matter included in the State List, for a temporary period, if the Council of States declares by a

resolution of 2/3 of its members present and voting, that it is necessary in the national interest that Parliament shall have power to legislate over such matters. Each such resolution will give a lease of one year to the law in question.

A law made by Parliament, which Parliament would not but for the passing of such resolution have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period [Art. 249]. The resolution of the Council of States may be renewed for a period of one year at a time.

(b) Under a Proclamation of Emergency. While a Proclamation of 'Emergency' made by the President is in operation, Parliament shall have similar power to legislate with respect to State subjects.

A law made by Parliament, which Parliament would not but for the issue of such Proclamation have been competent to make, shall, to the extent of incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period [Art. 250].

(c) By agreement between States. If the Legislatures of two or more States resolve that it shall be lawful for Parliament to make laws with respect to any matters included in the State list relating to those States, Parliament shall have such power as regards such States. It shall also be open to any other State to adopt such Union legislation in relation to itself by a resolution passed in that behalf in the Legislature of the State. In short, this is an extension of the jurisdiction of Parliament by consent of the State Legislatures [Art. 252].⁸

Thus, though Parliament has no competence to impose an estate duty with respect to agricultural lands, Parliament, in the Estate Duty Act, 1953, included the agricultural lands situated in certain States, by virtue of resolutions passed by the Legislatures of such States, under Art. 252, to confer such power upon Parliament. That Act has since been repealed.

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Other examples of such legislation are: Prize Competition Act, 1955; Urban Land (Ceiling and Regulation) Act, 1976; Water (Prevention and Control of Pollution) Act, 1974.

(d) To implement Treaties. Parliament shall have the power to legislate with respect to any subject for the purpose of implementing treaties or international agreements and conventions. In other words, the normal distribution of powers will not stand in the way of Parliament to enact legislation for carrying out its international obligations, even though such legislation may be necessary in relation to a State subject [Art. 253].

Examples of such legislation are: Geneva Convention Act, 1960; Anti-Hijacking Act, 1982; United Nations (Privileges and Immunities) Act, 1947.

(e) Under a Proclamation of Failure of Constitutional Machinery in the States. When such a Proclamation is made by the President, the President may declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament [Art. 356(l)(b)].

Interpretation of the Legislative Lists.

The interpretation of over 200 Entries in the three Legislative Lists is no easy task for the Courts and the Courts have to apply various judicial principles to reconcile the different Entries, a discussion of which would be beyond the scope of the present work.⁹ Suffice it to say that—

(a) Each Entry is given the widest import that its words are capable of, without rendering another Entry nugatory.¹⁰

(b) In order to determine whether a particular enactment falls under one Entry or the other, it is the 'pith and substance' of such enactment and not its legislative label that is taken account of.¹¹ If the enactment substantially falls under an Entry over which the Legislature has jurisdiction, an incidental encroachment upon another Entry over which it had no competence will not invalidate the law.¹⁰

(c) On the other hand, where a Legislature has no power to legislate with respect to a matter, the Courts will not permit such Legislature to transgress its own powers or to encroach upon those of another Legislature by resorting to any device or 'colourable legislation'.¹²

(d) The motives of the Legislature are, otherwise, irrelevant for determining whether it has transgressed the constitutional limits of its legislative power.¹²

Distribution of Executive Powers.

The distribution of executive powers between the Union and the States is somewhat more complicated than that of the legislative powers.

I. In general, it follows the scheme of distribution of the legislative powers. In the result, the executive power of a State is, in the main, coextensive with its legislative powers,—which means that the executive power of State shall extend only to its own territory and with respect to those subjects over which it has legislative competence [Art. 162]. Conversely, the Union shall have exclusive executive power over (a) the matters with respect to which Parliament has exclusive power to make laws [i.e., matters in List I

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of Sch. VII), and (b) the exercise of its powers conferred by any treaty or agreement [Art. 73]. On the other hand, a State shall have exclusive executive power over matters included in List II [Art. 162].

II. It is in the concurrent sphere that some novelty has been introduced. As regards matters included in the Concurrent Legislative List (i.e., List III), the executive function shall ordinarily remain with the States, but subject to the provisions of the Constitution or of any law of Parliament conferring such function expressly upon the Union. Under the Government of India Act, 1935, the Centre had only a power to give directions to Provincial Executive to execute a Central law relating to a Concurrent subject. But this power of giving directions proved ineffective; so, the Constitution provides that the Union may, whenever it thinks fit, itself take up the administration of Union laws relating to any Concurrent subject.

In the result, the executive power relating to concurrent subjects remains with the States, except in two cases—

(a) Where a law of Parliament relating to such subjects vests some executive function specifically in the Union, e.g., the Land Acquisition Act, 1894; the Industrial Disputes Act, 1947 [Proviso to Art. 73(1)]. So far as these functions specified in such Union law are concerned, it is the Union and not the States which shall have the executive power while the rest of the executive power relating to the subjects shall remain with the States.

(b) Where the provisions of the Constitution itself vest some executive functions upon the Union. Thus,

- (i) The executive power to implement any treaty or international agreement belongs exclusively to the Union, whether the subject appertains to the Union, State or Concurrent list [Art. 73(l)(b)].
- (ii) The Union has the power to give directions to the State Governments as regards the exercise of their executive power, in certain matters—

(I) In Normal times:

- (a) To ensure due compliance with Union laws and existing laws which apply in that State [Art. 256].
- (b) To ensure that the exercise of the executive power of the State does not interfere with the exercise of the executive power of the Union [Art. 257(1)].
- (c) To ensure the construction and maintenance of the means of communication of national or military importance by the State [Art. 257(2)].
- (d) To ensure protection of railways within the State [Art. 257(3)].
- (e) To ensure drawing and execution of schemes specified in the directions to be essential for the welfare of the Scheduled Tribes in the States [Art. 339(2)].
- (f) To secure the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups [Art. 350A].

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- (g) To ensure the development of the Hindi language [Art. 351].
- (h) To ensure that the government of a State is carried on in accordance with the provisions of the Constitution [Art. 355].

(II) In Emergencies:

(a) During a Proclamation of Emergency, the power of the Union to give directions extends to the giving of directions as to the manner in which the executive power of the State is to be exercised, relating to any matter [Art. 353(a)]. (so as to bring the State Government under the complete control of the Union, without suspending it).

(b) Upon a Proclamation of failure of constitutional machinery in a State, the President shall be entitled to assume to himself all or any of the executive powers of the State [Art. 356(1)].

(III) During a Proclamation of Financial Emergency:

(a) To observe canons of financial propriety, as may be specified in the directions [Art. 360(3)].

(b) To reduce the salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts [Art. 360(4)(b)].

(c) To require all Money Bills or other Financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State [Art. 360(4)].

III. While as regards the legislative powers, it is not competent for the Union [apart from Art. 252, see ante] and a State to encroach upon each other's exclusive jurisdiction by mutual consent, this is possible as regards executive powers. Thus, with the consent of the Government of a State, the Union may entrust its own executive functions relating to any matter to such State Government or its officers [Art. 258(1)]. Conversely, with the consent of the Union Government, it is competent for a State Government to entrust any of its executive functions to the former [Art. 258A].

IV. On the other hand, under Art. 258(2), a law made by Parliament relating to a Union subject may authorise the Central Government to delegate its functions or duties to the State Government or its officers (irrespective of the consent of such State Government).

REFERENCES

1. The creation of Chhattisgarh, Uttaranchal and Jharkhand States by carving out their territories from the territories of the Madhya Pradesh, the Uttar Pradesh and the Bihar States respectively in 2000 has raised the number of States from 25 to 28.

2. See Author's Constitutional Law of India (Prentice-Hall of India, 6th Ed., 1991) pp. 265,

3. Ibid., p. 467.

4. As stated earlier, the distribution does not apply to the Union Territories, in regard to which Parliament is competent to legislate with respect to any subject, including those which are enumerated in the 'State List'.

5. See Author's Constitutional Law of India (Prentice-Hall of India, 1991), pp. 281-84.

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6. Ibid., p. 279.

7. See Second Gift Tax Officer v. Nazareth, A. 1970 S.C. 999; Union of India v. Dhillon, (1971) 2 S.C.C. 779; Azam v. Expenditure Tax Officer, (1971) 3 S.C.C. 621; Shorter Constitution of India, 9th Ed., pp. 607, 929.

8. See Author's Constitutional Law of India (Prentice-Hall of India, 1991), p. 280.

9. Vide Author's Commentary on the Constitution of India, 5th Ed., Vol. IV, pp. 95 et seq. and Shorter Constitution of India, 9th Ed., pp. 34 et seq.; Constitutional Law of India 6th Ed., pp. 475-500.

10. State of Bombay v. Balsam, (1951) S.C.R. 682; Ramakrishna v. Municipal Committee, (1950) S.C.R. 15 (25).

11. Amur Singh v. State of Rajasthan, (1955) 2 S.C.R. 303 (325).

12. K.C.G. Narayana Deo v. State of Orissa, (1954) S.C.R. 1.

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CHAPTER 25 DISTRIBUTION OF FINANCIAL POWERS

Need for Distribution of Financial Resources.

NO system of federation can be successful unless both the Union and the States have at their disposal adequate financial resources to enable them to discharge their respective responsibilities under the Constitution.

To achieve this object, our Constitution has made elaborate provisions, mainly following the lines of the Government of India Act, 1935, relating to the distribution of the taxes as well as non-tax revenues and the power of borrowing, supplemented by provisions for grants-in-aid by the Union to the States.

Before entering into these elaborate provisions which set up a complicated arrangement for the distribution of the financial resources of the country, it has to be noted that the object of this complicated machinery is an equitable distribution of the financial resources between the two units of the federation, instead of dividing the resources into two watertight compartments, as under the usual federal system. A fitting introduction to this arrangement has been given by our Supreme Court,¹ in these words:

Sources of revenue which have been allocated to the Union are not meant entirely for the purposes of the Union but have to be distributed according to the principles laid down by Parliamentary legislation as contemplated by the Articles aforesaid. Thus all the taxes and duties levied by the Union ... do not form part of the Consolidated Fund of India but many of these taxes and duties are distributed amongst the States and form part of the Consolidated Fund of the States. Even those taxes and duties which constitute the Consolidated Fund of India may be used for the purposes of supplementing the revenues of the States in accordance with their needs. The question of distribution of the aforesaid taxes and duties amongst the States and the principles governing them, as also the principles governing grants-in-aid ... are matters which have to be decided by a high-powered Finance Commission, which is a responsible body designated to determine those matters in an objective way... The Constitution-makers realised the fact that those sources of revenue allocated to the States may not be sufficient for their purposes and that the Government of India would have to subsidise their welfare activities... Realising the limitations on the financial resources of the States and the growing needs of the community in a welfare State, the Constitution has made... specific provisions empowering Parliament to set aside a portion of its revenues... for the benefit of the States, not in stated proportions but according to their needs ... The resources of the Union Government are not meant exclusively for the benefit of the Union activities ... In other words, the Union and the States together form one organic whole for the purposes of utilisation of the resources of territories of India as a whole.

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Principles underlaying distribution of Tax Revenues.

The Constitution makes a distinction between the legislative power to levy a tax and the power to appropriate the proceeds of a tax so levied. In India, the powers of a Legislature in these two respects are not identical.

Distribution of Legislative Powers to levy taxes.

(A) The legislative power to make a law for imposing a tax is divided as between the Union and the States by means of specific Entries in the Union and State Legislative lists in Sch. VII (see Table XIX). Thus, while the State Legislature has the power to levy an estate duty in respect of agricultural lands [Entry 48 of list II], the power to levy an estate duty in respect of non-agricultural land belongs to Parliament [Entry 87 of list I]. Similarly, it is the State Legislature which is competent to levy a tax on agricultural income [Entry 46 of list II], while Parliament has the power to levy income-tax on all incomes other than agricultural [Entry 82 of List I].

The residuary power as regards taxation (as in general legislation) belongs to Parliament [Entry 97 of List I] and the Gift tax and Expenditure tax have been held to derive their authority from this residuary power. There is no concurrent sphere in the matter of tax legislation.

Before leaving this topic, it should be pointed out that though a State Legislature has the power to levy any of the taxes enumerated in the State Legislative List, in the case of certain taxes, this power is subject to certain limitations imposed by the substantive provisions of the Constitution. Thus—

(a) Professions Tax.

(a) While Entry 60 of List II of Sch. VII authorises a State Legislature to levy a tax on profession, trade, calling or employment, the total amount payable in respect of any one person to the State or any other authority in the State by way of such tax shall not exceed Rs. 2,500 per annum [Art. 276(2)].

(b) Sales Tax.

(b) The power to impose taxes on sale or purchase of goods other than newspapers belongs to the State [Entry 54, List II]. But taxes on imports and exports [Entry 83, List I] and taxes on sales in the course of inter-State trade and commerce [Entry 92A, List I] are exclusive Union subjects. Article 286 is intended to ensure that sales taxes imposed by States do not interfere with imports and exports or inter-State trade and commerce, which are matters of national concern, and should, therefore, be beyond the competence of the States. Hence, certain limitations have been laid down by Art. 286 upon the power of the States to enact sales tax legislation:

1. (a) No tax shall be imposed on sale or purchase which takes place outside the State.
- (b) No tax shall be imposed on sale or purchase which takes place in the course of import into or export out of India.³
2. In connection with inter-State trade and commerce there are two limitations—

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- (i) The power to tax sales taking place in the course of inter-State trade and commerce ⁴ is within the exclusive competence of Parliament [Entry 92A, List I].
- (ii) Even though a sale does not take place in the course of inter-State trade or commerce, State taxation would be subject to restrictions and conditions imposed by Parliament if the sale relates to goods declared by Parliament to be of special importance in inter-State trade and commerce. In pursuance of this power, Parliament has declared sugar, tobacco, cotton, silk and woollen fabrics to be goods of special importance in inter-State trade and commerce, by enacting the Additional Duties of Excise (Goods of Special Importance) Act, 1957 [s. 7], and imposed special restrictions upon the States to levy tax on the sales of these goods.

(c) Tax on Consumption or Sale of Electricity.

(c) Save insofar as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

(i) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(ii) consumed in the construction, maintenance or operation of any railway by the Government of India, or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway [Art. 287].

(d) Exemption of Union and State properties from mutual taxation.

(d) The property of the Union shall, save insofar Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State [Art. 285(1)].

Conversely, the property and income of a State shall be exempt from Union taxation [Art. 289(1)]. There is, however, one exception in this case. If a State enters into a trade or business, other than a trade or business which is declared by Parliament to be incidental to the ordinary business of government, it shall not be exempt from Union taxation [Art. 289(2)]. The immunity, again, relates to a tax on property. Hence, the property of a State is not immune from customs duty.¹

Distribution of proceeds of Taxes.

(B) Even though a Legislature may have been given the power to levy a tax because of its affinity to the subject-matter of taxation, the yield of different taxes coming within the State legislative sphere may not be large enough to serve the purposes of a State. To meet this situation, the Constitution makes special provisions:

(i) Some duties are leviable by the Union; but they are to be collected and entirely appropriated by the States after collection.

(ii) There are some taxes which are both levied and collected by the Union, but the proceeds are then assigned by the Union to those States within which they have been levied.

(iii) Again, there are taxes which are levied and collected by the Union but the proceeds are distributed between the Union and the State.

The distribution of the tax-revenue between the Union and the States according to the foregoing principles, stands as follows:

(A) Taxes belonging to the Union exclusively:

1. Customs.
2. Corporation tax.
3. Taxes on capital value of assets of individuals and Companies.
4. Surcharge on income tax, etc.
5. Fees in respect of matters in the UnionList (List I).

(B) Taxes belonging to the States exclusively:

1. Land Revenue.
2. Stamp duty except in documents included in the UnionList.
3. Succession duty, Estate duty, and Income tax on agricultural land.
4. Taxes on passengers and goods carried on inland waterways.
5. Taxes on lands and buildings, mineral rights.
6. Taxes on animals and boats, on road vehicles, on advertisements, on consumption of electricity, on luxuries and amusements, etc.
7. Taxes on entry of goods into local areas.
8. Sales Tax.
9. Tolls.
10. Fees in respect of matters in the StateList.
11. Taxes on professions, trades, etc., not exceeding Rs. 2,500 per annum (List II).

(C) Duties Levied by the Union but Collected and Appropriated by the States:

Stamp duties on bills of Exchange, etc., and Excise duties on medicinal and toilet preparations containing alcohol, though they are included in the Union List and levied by the Union, shall be collected by the States insofar as leviable within their respective territories, and shall form part of the States by whom they are collected [Art. 268].

(D) Taxes Levied as well as Collected by the Union, but Assigned to the States within which they are Leviable:

- (a) Duties on succession to property other than agricultural land.
- (b) Estate duty in respect of property other than agricultural land.
- (c) Terminal taxes on goods or passengers carried by railway, air or sea.
- (d) Taxes on railway fares and freights.
- (e) Taxes on stock exchange other than stamp duties.
- (f) Taxes on sales of and advertisements in newspapers.
- (g) Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
- (h) Taxes on inter-State consignment of goods [Art. 269].

(E) Taxes Levied and Collected by the Union and Distributed between Union and the States:

Certain taxes shall be levied as well as collected by the Union, but their proceeds shall be divided between the Union and the States in a certain proportion, in order to effect an equitable division of the financial resources. These are—

- (a) Taxes on income other than on agricultural income [Art. 270].

- (b) Duties of excise as are included in the Union List, excepting medicinal and toilet preparations may also be distributed, if Parliament by law so provides [Art. 272].

(F) The principal sources of non-tax revenues of the Union are the receipts from—

Distribution of Non-tax Revenues.

Railways; Posts and Telegraphs; Broadcasting; Opium; Currency and Mint; Industrial and Commercial Undertakings of the Central Government relating to the subjects over which the Union has jurisdiction.

Of the Industrial and Commercial Undertakings relating to Central subjects may be mentioned—

The Industrial Finance Corporation; Air India; Indian Airlines; Industries in which the Government of India have made investments, such as the Steel Authority of India; the Hindustan Shipyard Ltd; the Indian Telephone Industries Ltd.

(G) The States, similarly, have their receipts from—

Forests, Irrigation and Commercial Enterprises (like Electricity, Road Transport) and Industrial Undertakings (such as Soap, Sandalwood, Iron and Steel in Karnataka, Paper in Madhya Pradesh, Milk Supply in Mumbai, Deep-sea Fishing and Silk in West Bengal).

Grants-in-Aid.

Even after the assignment to the States of a share of the Central taxes, the resources of all the States may not be adequate enough. The Constitution, therefore, provides that grants-in-aid shall be made in each year by the Union to such States as Parliament may determine to be in need of assistance; particularly, for the promotion of welfare of tribal areas, including special grants to Assam in this respect [Art. 275].

Constitution and Functions of the Finance Commission.

Articles 270, 273, 275 and 280 provide for the constitution of a Finance Commission (at five year intervals) to recommend to the President certain measures relating to the distribution of financial resources between the Union and the States,—for instance, the percentage of the net proceeds of income-tax which should be assigned by the Union to the States and the manner in which the share to be assigned shall be distributed among the States [Art. 280].

The constitution of the Finance Commission is laid down in Art. 280, which has to be read with the Finance Commission (Miscellaneous Provisions) Act of 1951, which has supplemented the provisions of the Constitution. Briefly speaking, the Commission has to be constituted by the President, every five years. The Chairman must be a person having experience in public affairs ; and the other four members must be appointed from amongst the following—

(a) A High Court Judge or one qualified to be appointed as such; (b) a person having special knowledge of the finances and accounts of the Government; (c) a person having wide experience in financial matters and administration ; (d) a person having special knowledge of economics.

It shall be the duty of the Commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between

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them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;

(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State;⁵

(d) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State;⁶

(e) any other matter referred to the Commission by the President in the interests of sound finance.

The First Finance Commission.

The First Finance Commission was constituted in 1951, with Sri Neogy as the Chairman, and it submitted its report in 1953. Government accepted its recommendations which inter alia, were that—

(a) 55 per cent of the net proceeds of income-tax shall be assigned by the Union to the States and that it shall be distributed among the States in the shares prescribed by the Commission.

(b) The Commission laid down the principles for guidance of the Government of India in the matter of making general grants-in-aid to States which require financial assistance and also recommended specific sums to be given to certain States such as West Bengal, Punjab, Assam, during the five years from 1952 to 1957.

A Second Finance Commission.

A Second Finance Commission, with Sri Santhanam as the Chairman, was constituted in 1956. Its report was submitted to Government in September, 1957 and its recommendations were given effect to for the quinquennium commencing from April, 1957.

Third Finance Commission.

Third Finance Commission, with Sri A.K. Chanda as its Chairman, was appointed in December, 1960. It submitted its report in 1962.

The Fourth Finance Commission.

The Fourth Finance Commission with Dr. RAJAMANNAR, retired Chief Justice of the Madras High Court, as its Chairman, was constituted in May, 1964.

A Fifth Finance Commission.

A Fifth Finance Commission, headed by Sri Mahavir Tyagi, was constituted in March, 1968, with respect to the quinquennium commencing from 14-1969. It submitted its final report in July 1969, and recommended that the States share of income-tax should be raised to 75 per cent and of Union Excise duties should be raised to 20 per cent.

The Sixth Finance Commission.

The Sixth Finance Commission, headed by Sri Brahmananda Reddy, submitted its Report in October, 1973. This Commission was, for the first time, required to go into the question of the debt position of the States and their non-plan capital gap.

A Seventh Finance Commission.

A Seventh Finance Commission was appointed in June, 1977 in relation to the next quinquennium from 1979, with Sri Shelat, a retired Judge of the Supreme Court as its Chairman. It submitted its report in October, 1978.

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The Eighth Finance Commission.

The Eighth Finance Commission was set up in 1982, with ex-Minister, Shri Y.B. Chavan as its head.

The Eighth Finance Commission submitted its report in 1984, but its recommendations, granting moneys to the States, were not implemented by the Government of India, on the ground of financial difficulties and late receipt of the Commission's Report. Obviously, this placed some of the States in financial difficulty and the State of West Bengal raised vehement protest against this unforeseen situation. Responsible authorities in West Bengal threatened litigation but eventually nothing was done presumably because the matter was non-justiciable. Article 280(3) enjoins the Finance Commission to make recommendations to the President and the only duty imposed on the President, by Art. 281, is to lay the recommendations of the Commission before each House of Parliament. It is nowhere laid down in the Constitution that the recommendations of the Commission shall be binding upon the Government of India or that it would give rise to a legal right in favour of the beneficiary States to receive the moneys recommended to be offered to them by the Commission. Of course, non-implementation would cause grave dislocation in States which might have acted upon their anticipation founded on the Commission's Report. The remedy for such dislocation or injustice lies only in the ballot box.

The Ninth Finance Commission.

The Ninth Finance Commission, headed by Shri N.K.P. Salve, submitted its reports in 1988 and 1989; all its recommendations have been accepted by the Government⁷

The Tenth Finance Commission.

The Tenth Finance Commission was constituted on 16-6-1992, with Shri K.C. Pant as its Chairman. It submitted its report on 26-11-1994.

The Eleventh Finance Commission.

The Eleventh Finance Commission was constituted on 3-7-1998. It submitted its report on 7-7-2000.

Safeguarding the interests of the States in the shared Taxes.

By way of safeguarding the interests of the States

Union taxes which are divisible according to the foregoing provisions, it is provided by the Constitution [Art. 274] that no Bill or amendment which—

- (a) varies the rate of any tax or duty in which the States are interested; or
- (b) affects the principles on which moneys are distributable according to the foregoing provisions of the Constitution; or
- (c) imposes any surcharge on any such tax or duty for the purposes of the Union,

shall be introduced or moved in Parliament except on the recommendation of the President

Subject to the above condition, however, it is competent for Parliament to increase the rate of any such tax or duty (by imposing a surcharge) for purposes of the Union [Art. 271].

Financial control by the Union in Emergencies.

As in the legislative and administrative spheres, so in financial matters, the normal relation between the Union and the States (under Arts. 268-279) is liable to be modified in different kinds of emergencies. Thus,

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- (a) While a Proclamation of Emergency [Art. 352(1)] is in operation, the President may by order direct that, for a period not extending beyond the expiration of the financial year in which the Proclamation ceases to operate, all or any of the provisions relating to the division of the taxes between the Union and the States and grants-in-aid shall be suspended [Art. 354]. In the result, if

any such order is made by the President, the States will be left to their narrow resources from the revenues under the State List, without any augmentation by contributions from the Union.

(b) While a Proclamation of Financial Emergency [Art. 360(1)] is made by the President, it shall be competent for the Union to give directions to the States—

(i) to observe such canons of financial propriety and other safeguards as may be specified in the directions;

(ii) to reduce the salaries and allowances of all persons serving in connection with the affairs of the State, including High Court Judges;

(iii) to reserve for the consideration of the President all money and financial Bills, after they are passed by the Legislature of the State [Art. 360]

Borrowing Powers of the Union and the States.

The Union shall have unlimited power of borrowing, upon the security of the revenues of India either within India or outside. The Union Executive shall exercise the power subject only to such limits as may be fixed by Parliament from time to time [Art. 292].

The borrowing power of a State is, however, subject to a number of constitutional limitations:

(i) It cannot borrow outside India. Under the Government of India Act, 1935, the States had the power to borrow outside India with the consent of the Centre. But this power is totally denied to the States by the Constitution; the Union shall have the sole right to enter into the international money market in the matter of borrowing.

(ii) The State Executive shall have the power to borrow, within the territory of India upon the security of the revenues of the State; subject to the following conditions:

(a) Limitations as may be imposed by the State Legislature.

(b) If the Union has guaranteed an outstanding loan of the State, no fresh loan can be raised by the State without consent of the Union Government.

(c) The Government of India may itself offer a loan to a State, under a law made by Parliament. So long as such a loan or any part thereof remains outstanding, no fresh loan can be raised by the State without the consent of the Government of India. The Government of India may impose terms in giving its consent as above [Art. 293].

Demand for more Financial power by States.

Before closing this Chapter, it should be pointed out that there is a growing demand from some of the States for greater financial powers, by amending the Constitution, if necessary, which was stoutly resisted

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by Prime Minister Desai.⁸ There are two relevant considerations on this issue:

(i) The steps taken by Pakistan to make nuclear bombs together with the equivocal conduct of China leave no room for complacence in the matter of defence. Hence, the Union cannot yield to any weakening of its resources that would prejudice the defence potential of the country.⁹

(ii) On the other hand, the welfare activities of the States involving huge expenditure, natural calamities, etc., which could not be fully envisaged in 1950, call for a revision of the financial provisions of the Constitution.

The entire subject of Centre-State Relations has been reviewed by the Sarkaria Commission. Its Report is under consideration by the Government.¹⁰

REFERENCES

1. Coffee Board v. C. T. O., A. 1971 S. C. 870.
2. The maximum limit of the professions tax has been raised from Rs. 250 to Rs. 2500, by the Constitution (60th Amendment) Act, 1988.
3. State of J. & K. v. Caltex, A. 1966 S.C. 1350.
4. In re Sea Customs Act, A. 1963 S.C. 1760 (7 777).
5. Inserted by the Constitution (73rd Amendment) Act, 1992, w.e.f. 24-4-1993.
6. Inserted by the Constitution (74th Amendment) Act, 1992, w.e.f. 1-6-1993.
7. Vide India, 1990, p. 349.
8. Mrs. Gandhi's Second Government has also adhered to the recommendations of the Administrative Reforms Commission that no amendment of the Constitution is necessary to alter the relation between the Centre and the States, on the ground, inter alia, that the financial deficiencies of particular States are being periodically examined and provided for by the Finance Commission, by making larger grants to those States from the Union revenues, according to the provisions of the Constitution.
9. For India's Annual Budget and defence expenditure for 1999-2000, see Table I.
10. Vide Author's Comparative Federalism (Prentice-Hall of India, 1987).

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CHAPTER 26 ADMINISTRATIVE RELATIONS BETWEEN THE UNION AND THE STATES

Need for co-ordination between the Units of the Federation.

ANY federal scheme involves the setting up of dual governments and division of powers. But the success and strength of the federal polity depends upon the maximum of co-operation and co-ordination between the governments. The topic may be discussed under two heads:

- (a) Relation between the Union and States;
- (b) Relation between the States inter se.

In the present Chapter the former aspect will be discussed and the inter-State relations will be dealt with in the next Chapter.

(A) TECHNIQUES OF UNION CONTROL OVER STATES

It would be convenient to discuss this matter under two heads—(i) in emergencies; (ii) in normal times.

I. In Emergencies. It has already been pointed out that in 'emergencies' the government under the Indian Constitution will work as if it were a unitary government. This aspect will be more fully discussed in Chap. 28.

II. In Normal Times. Even in normal times, the Constitution has devised techniques of control over the States by the Union to ensure that the State governments do not interfere with the legislative and executive policies of the Union and also to ensure the efficiency and strength of each individual unit which is essential for the strength of the Union.

Some of these avenues of control arise out of the executive and legislative powers vested in the President, in relation to the States, e.g. :

- (i) The power to appoint and dismiss the Governor [Arts. 155-156]; the power to appoint other dignitaries in the State, e.g., Judges of the High Court; Members of the State Public Service Commission [Arts. 217, 317].
- (ii) Legislative powers, e.g., previous sanction to introduce legislation in the State Legislature [Art. 304, Proviso]; assent to specified legislation which must be reserved for his consideration [Art. 31A(1), Prov. 1; 31C Prov. 288(2)]; instruction of President required for the Governor to make

Ordinance relating to specified matters [Art. 213(1), Prov.]; veto power in respect of other State Bills reserved by the Governor [Art. 200, Prov. 11].

These having been explained in the preceding Chapters, in the present chapter we shall discuss other specific agencies for Union control, namely:

- (i) Directions to the State Government.
- (ii) Delegation of Union functions.
- (iii) All-India Services.
- (iv) Grant-in-aid.
- (v) Inter-State Councils.
- (vi) Inter-State Commerce Commission [Art. 307].

Directions by the Union to State Governments.

The idea of the Union giving directions to the States is foreign and repugnant to a truly federal system. But this idea was taken by the framers of our Constitution from the Government of India Act, 1935, in view of the peculiar conditions of this country and, particularly, the circumstances out of which the federation emerged.

The circumstances under which and the matters relating to which it shall be competent for the Union to give directions to a State have already been stated. The sanction prescribed by the Constitution to secure compliance with such directions remains to be discussed.

It is to be noted that the Constitution prescribes a coercive sanction for the enforcement of the directions issued under any of the foregoing powers, namely, the power of the President to make a Proclamation under Art. 356. This is provided in Art. 365 as follows :

Sanction for enforcement of Directions.

"Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution."

And as soon as a Proclamation under Art. 356 is made by the President he will be entitled to assume to himself any of the functions of the State Government as are specified in that Article.

Delegation of Functions.

It has already been stated that with the consent of the Government of a State, President may entrust to that Government executive functions of the Union relating to any matter [Art. 258(1)]. While legislating on a Union subject, Parliament may delegate powers to the State Governments and their officers insofar as the statute is applicable in the respective States [Art. 258(2)].

Conversely, a State Government may, with the consent of the Government of India, confer administrative functions upon the latter, relating to State subjects [Art. 258A].

Thus, where it is inconvenient for either Government to directly carry out its administrative functions, it may have those functions executed through the other Government.

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All-India Services.

It has been pointed out earlier that besides persons serving under the Union and the States, there will be certain services 'common to the Union and the States'. These are called 'All-India Services', of which the Indian Administrative Service and the Indian Police Service are the existing examples [Art. 312(2)]. But the Constitution gives the power to create additional All-India Services.¹ If the Council of States declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interests so to do, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States and regulate the recruitment, and the conditions of service of persons appointed, to any such service [Art. 312(1)].'

As explained by Dr. Ambedkar in the Constituent Assembly, the object behind this provision for All-India Services is to impart a greater cohesion to the federal system and greater efficiency to the administration in both the Union and the States:

"The dual policy which is inherent in a federal system is followed in all federations by a dual service. In all Federations, there is a Federal Civil Service and a State Civil Service. The Indian Federation, though a dual polity, will have a dual service, but with one exception. It is recognised that in every country there are certain parts in its administrative set-up which might be called strategic from the point of view of maintaining the standard of administration... There can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to these strategic posts... The Constitution provides that without depriving the States of their right to form their own civil services there shall be an all-India Service, recruited on an all-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the Union."

Grants-in-Aid.

As stated earlier, Parliament is given power to make such grants as it may deem necessary to give financial assistance to any State which is in need of such assistance [Art. 275].

By means of the grants, the Union would be in a position to correct inter-State disparities in financial resources which are not conducive to an all-round development of the country and also to exercise control and coordination over the welfare schemes of the States on a national scale.

Besides this general power to make grants to the States for financial assistance, the Constitution provides for specific grants on two matters: (a) For schemes of development, for welfare of Scheduled Tribes and for raising the level of administration of Scheduled Areas, as may have been undertaken by a State with the approval of the Government of India, (b) To the State of Assam, for the development of the tribal Areas in that State [Provisos. 1-2, Art. 275(1)].

Inter-State Council.

The President is empowered to establish an inter-State Council [Art. 263] if at any time it appears to him that the public interests would be served thereby. Though the President is given the power to define the nature of the duties to be performed by the Council, the Constitution outlines the three-fold duties that may be assigned to this body. One of these is—

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"the duty of inquiring into and advising upon disputes which may have arisen between States."

The other functions of such Council would be to investigate and discuss subjects of common interest between the Union and the States or between two or more States inter se, e.g. research in such matters as agriculture, forestry, public health and to make recommendation for coordination of policy and action relating to such subject.

In exercise of this power, the President has so far established a Central Council of Health,² a Central Council of Local Self-Government,³ and a Transport Development Council,⁴ for the purpose of co-ordinating the policy of the States relating to these matters. In fact, the primary object of an Inter-State Council being co-ordination and federal cohesion, this object has been lost sight of, while creating fragmentary bodies to deal with specified matters relying on the statutory interpretation that the singular 'a' before the word 'Council' includes the plural.

The Sarkaria Commission has recommended the constitution of a permanent inter-State Council, which should be charged with the duties set out in (b) and (c) of Art. 263. Such a Council, consisting of six Union Cabinet Ministers and the Chief Ministers of all the States, has been created in April, 1990.⁵

Inter-State Commerce Commission.

For the purpose of enforcing the provisions of the Constitution relating to the freedom of trade, commerce and intercourse throughout the territory of India [Arts. 301—305], Parliament is empowered to constitute an authority similar to the Inter-State Commerce Commission in the U.S.A. and to confer on such authority such powers and duties as it may deem fit [Art. 307]. No such Commission has, however, been set up by May, 1994.

Extra-constitutional Agencies for setting All-India Problems.

Apart from the above constitutional agencies for Union control over the States, to ensure a co-ordinated development of India notwithstanding a federal system of government, there are some advisory bodies and conferences held at the Union level, which further the co-ordination of State policy and eliminate differences as between the States. The foremost of such bodies is the Planning Commission.

Planning Commission.

Though the Constitution specifically mentions several Commissions to achieve various purposes, the Planning Commission, as such, is not to be found in the Constitution. 'Economic and social planning' is a concurrent legislative power [Entry 20, List III]. Taking advantage of this Union power, the Union set up a Planning Commission in 1950, but without resorting to legislation. This extra-constitutional and non-statutory body was set up by a resolution (1950) of the Union Cabinet by Prime Minister Nehru with himself as its first Chairman, to formulate an integrated Five Year6 Plan for economic and social development and to act as an advisory body to the Union Government, in this behalf.

Set up with this definite object, the Commission's activities have gradually been extended over the entire sphere of the administration

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excluding only defence and foreign affairs, so much so, that a critic has described it as "the economic Cabinet of the country as a whole", consisting of the Prime Minister and encroaching upon the functions of constitutional bodies, such as the Finance Commission7 and, yet, not being accountable to Parliament. It has built up a heavy bureaucratic organisation8 which led Pandit Nehru himself to observe7—

"The Commission which was a small body of serious thinkers had turned into a government department complete with a crowd of secretaries, directors and of course a big building."

According to these critics, the Planning Commission is one of the agencies of encroachment upon the autonomy of the States under the federal system. The extent of the influence of this Commission should, however, be precisely examined before arriving at any conclusion. The function of the Commission is to prepare a plan for the "most effective and balanced utilisation of the country's resources", which would initiate "a process of development which will raise living standards and open out to the people new opportunities for a richer and more varied life". It is obvious that the business of the Commission is only to prepare the plans; the implementation of the plans rests with the States because the development relates to mostly State subjects. There is no doubt that at the Union, the Planning Commission has great weight, having the Prime Minister himself as its Chairman. But so far as the States are concerned, the role of the Commission is only advisory. Whatever influence it exerts is only indirect, insofar as the States vie with each other in having their requirements included in the national plan. After that is done, the Planning Commission can have no direct means of securing the implementation of the plan.

If, at that stage, the States are obliged to follow the uniform policy laid down by the Planning Commission, that is because the States cannot do without obtaining financial assistance from the Union.⁹ But, strictly speaking, taking advantage of financial assistance involves voluntary element, not coercion, and even in the United States the receipt of federal grants-in-aid is not considered to be a subversion of the federal system, even though it operates as an encroachment upon State autonomy, according to many critics.¹⁰

But there is justification behind the criticism that there is overlapping of work and responsibility owing to the setting up of two high-powered bodies, viz., the Finance Commission and the Planning Commission and the Administrative Reforms Commission has commented upon it.¹¹ There is, in fact, no natural division between 'plan expenditure' and 'non-plan expenditure'. The anomaly has been due to the fact that the makers of the Constitution could not, at that time, envisage the creation of a body like the Planning Commission which has subsequently been set up by executive order. Be that as it may be, the need for co-ordination between the two Commissions is patent, and, ultimately, this must be taken over by the Cabinet or a body such as the National Development Council of which we shall speak just now, unless the two Commissions are unified,—which would require an amendment of the Constitution because the Finance Commission is mentioned in the Constitution.

National Development Council.

The working of the Planning Commission, again, has led to the setting up of another extra-constitutional and extra-legal body, namely, the National Development Council.

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This Council was formed in 1952, as an adjunct to the Planning Commission, to associate the States in the formulation of the Plans. 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", and in particular, are—

- (a) to review the working of the National Plan from time to time;
- (b) to recommend measures for the achievement of the aims and targets set out in the National Plan.

Since the middle of 1967, all members of the Union Cabinet, Chief Ministers of States, the Administrators of the Union Territories and members of the Planning Commission have been members of this Council.¹²

Besides the Planning Commission, the annual conferences, whose number is legion, held under the auspices of the Union, serve to evolve coordination and integration even in the State sphere. Apart from conferences held on specific problems, there are annual conferences at the highest level, such as the Governors' Conference, the Chief Ministers' Conference, the Law Ministers' Conference, the Chief Justices' Conference, which are of no mean importance from the

standpoint of the Union-State as well as inter-State relations. As Appleby⁸ has observed, it is by means of such contacts rather than by the use of constitutional coercion, that the Union is maintaining a hold over this sub-continent, having 25 autonomous States (now 28):

"No other large and important national government... 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.

The power that is exercised organically in New Delhi is the uncertain and discontinuous power of prestige. It is influence rather than power. Its method is making plans, issuing pronouncements, holding conferences... Any real power in most of the development field is the personal power of particular leaders and the informal, extra-constitutional, extra-administrative power of a dominant party, coherent and strongly led by the same leaders. Dependence of achievement, therefore, is in some crucial ways, apart from the formal organs of governance, in forces which in the future may take quite different forms."⁸

National Integration Council.

Another non-constitutional body, the National Integration Council, was created in 1986, to deal with welfare measures for the minorities on an all India basis. The National Front Government revived it in 1990, with a broad-based composition, including not only Union Ministers and Chief Ministers of States, but also representatives of national and regional political parties, labour, women, public figures as well as media representatives. The issues before its first meeting were—

Communal harmony, increased violence by secessionists, the problems in respect of Punjab, Kashmir, Ram Janambhoomi-Babri Masjid.

(B) CO-OPERATION BETWEEN THE UNION AND THE STATES

Apart from the agencies of federal control, there are certain provisions which tend towards a smooth working of both the Union and State Governments, without any unnecessary conflict jurisdiction. These are—

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(i) Mutual delegation of functions, (ii) Immunity from mutual taxation.

Mutual Delegation of Functions.

(a) As explained already our Constitution distributes between the Union and the States not only the legislative power but also the executive power, more or less on the same lines [Arts. 73, 162].

The result is that it is not competent for a State to exercise administrative power with respect to Union subjects, or for the Union to take up the administration of any State function, unless

authorised in that behalf by any provision in the Constitution. In administrative matters, a rigid division like this may lead to occasional deadlocks. To avoid such a situation, the Constitution has engrafted provisions enabling the Union as well as a State to make a mutual delegation of their respective administrative functions:

(b) As to the delegation of Union functions, there are two methods:

(i) With the consent of the State Government, the President may, without any legislative sanction, entrust any executive function to that State [Art. 258(1)].

(ii) Irrespective of any consent of the State concerned, Parliament may, while legislating with respect to Union subject, confer powers upon a State or its officers, relating to such subject [Art. 258(2)]. Such delegation has, in short, a statutory basis.

(c) Conversely, with the consent of the Government of India, the Governor of a State may entrust on the Union Government or its officers, functions relating to a State subject, so far as that State is concerned [Art. 258A].

(C) IMMUNITY FROM MUTUAL TAXATION

Need for Mutual immunity for Proper Working of Federal System.

The system of double government set up by a federal Constitution requires, for its smooth working, the immunity of the property of one Government from taxation by another. Though there is some difference between federal Constitutions as to the extent to which this immunity should go, there is an agreement on the principle that mutual immunity from taxation would save a good deal of fruitless labour in assessment and calculation and cross-accounting of taxes between the two governments (Union and State).

This matter is dealt with in Arts. 285 and 289 of our Constitution, relating to the immunity of the Union and a State, respectively.

Immunity of Union Property from State Taxation.

The property of the Union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a state [Art. 285(1)].

Exemption of Property and Income of a State from Union Taxation.

Similarly the property of a State is immune from Union taxation [Art. 289(1)]. The immunity, however, does not extend to all Union taxes, as held by our Supreme Court,¹³ but is confined only to such taxes as

are levied on property. A State is, therefore, not immune from customs duty, which is imposed, not on property, but on the act of import or export of goods.

Not only the 'property' but also the 'income' of a State is exempted from Union taxation. The exemption is, however, confined to the State Government and does not extend to any local authority situated within a State. The above immunity of the income of a State is, again, subject to an overriding power of Parliament as regards any income derived from a commercial activity. Thus—

- (a) Ordinarily, the income derived by a State from commercial activities shall be immune from income-tax levied by the Union.
- (b) Parliament is, however, competent to tax the income of a State derived from a commercial activity.
- (c) If, however, Parliament declares any apparently trading functions as functions 'incidental to the ordinary functions of government', the income from such functions shall be no longer taxable, so long as such declaration stands.¹⁴

REFERENCES

1. Until 1961, no additional All-India Services were created, but several new All-India Services have recently been created [vide footnote no. 24 under Chap, 30. Post].
2. S.R.O. 1418, dated 9-8-1952; India, 1959, p. 146
3. India, 1957, p. 398
4. India, 1979, p. 352. Also Central Council of Indian Medicine, Central Family Welfare Council [India, 1982, pp. 101, 108].
5. Rep. of the Administrative Reforms Commission (1969), Vol. 1, pp. 32-34; the Report of the Sarkaria Commission on Inter-State Relations, Part I, paras. 9.3.05-06.
6. The current Plan is the 9th Five Year Plan (1997-2002)
7. CHANDRA, Federation in India, pp. 213 et seq.
8. APPLEBY, Public Administration in India, p. 22
9. Under the Second Five Year Plan, 70 per cent of the 'revenue expenditure' and nearly the - whole of the 'capital expenditure' on the State Plans were financed by grants from the Union (under Art. 275 of the Constitution), known as 'matching grants'.
10. Vide BASU'S Commentary on the Constitution of India, 5th Ed., Vol. IV, p. 304; Steward Machine Co. v. Davis, (1937) 301 U.S. 548.

11. Rep. of the Administrative Reforms Commission, Vol. I, pp. 16-19, 26-39.

12. Statesman, 18-7-1976, p. 1

13. In re, Sea Customs Act, A. 1963 S.C. 1760.

14. A.P.S.R.T.C. v. I.T.O., A. 1964 S.C. 1486 (1491, 1493).

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CHAPTER 27 INTER-STATE RELATIONS

I. INTER-STATE COMITY

Inter-State Comity.

Though a federal Constitution involves the sovereignty of the Units within their respective territorial limits, it is not possible for them to remain in complete isolation from each other and the very exercise of internal sovereignty by a Unit would require its recognition by, and co-operation of, the other Units of the federation. All federal Constitutions, therefore, lay down certain rules of comity which the Units are required to observe, in their treatment of each other. These rules and agencies relate to such matters as—

- (a) Recognition of the public acts, records and judicial proceedings of each other.
- (b) Extra-judicial settlement of disputes.
- (c) Co-ordination between States.
- (d) Freedom of inter-State trade, commerce and intercourse.

Full Faith and Credit.

(A) Recognition of Public Acts, etc. Since the jurisdiction of each State is confined to its own territory [Arts. 162, 245(1)], the acts and records of one State might have been refused to be recognised in another State, without a provision to compel such recognition. The Constitution, therefore, provides that—

"Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and every State" [Art. 261(1)].

This means that duly authenticated copies of statutes or statutory instruments, judgments or orders of one State shall be given recognition in another State in the same manner as the statutes, etc., of the latter State itself. Parliament has the power to legislate as to the mode of proof of such acts and records or the effects thereof [Art. 261(2)].

Prevention and Settlement of Disputes.

(B) Extra-judicial Settlement of Disputes. Since the States, in every federation, normally act as independent units in the exercise of their internal sovereignty, conflicts of interest between the units are sure to arise. Hence, in order to maintain the strength of the Union, it is essential that there should be adequate provision for judicial determination of disputes between the units and for settlement of disputes by extra-judicial bodies as well as their prevention by consultation and joint action. While Art. 131 provides for the judicial determination of disputes between States

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by vesting the Supreme Court with exclusive jurisdiction in the matter, Art. 262 provides for the adjudication of one class of such disputes by an extra-judicial tribunal, while Art. 263 provides for the prevention of inter-State disputes by investigation and recommendation by an administrative body. Thus—

(i) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley and also provide for the exclusion of the jurisdiction of all Courts, including the Supreme Court, to entertain such disputes [Art. 262].

In exercise of this power, Parliament has enacted the Inter-State Water Disputes Act, 1956, providing for the constitution of an ad hoc Tribunal for the adjudication of any dispute arising between two or more States with regard to the waters of any inter-State river or river valley.

(ii) The President can establish an inter-State Council for enquiring into and advising upon inter-State disputes, if at any time it appears to him that the public interests would be served by the establishment of such Council [Art. 263(a)].

Inter-State Councils.

(C) Co-ordination between States. The power of the President to set up inter-State Councils may be exercised not only for advising upon disputes, but also for the purpose of 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. In exercise of this power, the President has already constituted the Central Council of Health, the Central Council of Local Self-Government, the Central Council of Indian Medicine,¹ Central Council of Homeopathy.

In this connection, it should be mentioned that advisory bodies to advise on inter-State matters have also been established under statutory authority:

Zonal Councils.

[a] Zonal Councils have been established by the States Reorganisation Act, 1956 to advise on matters of common interest to each of the five zones into which the territory of India has been divided,—Northern, Southern, Eastern, Western and Central.

It should be remembered that these Zonal Councils do not owe their origin to the Constitution but to an Act of Parliament, having been introduced by the States Reorganisation Act, as a part of the scheme of reorganisation of the States with a view to securing co-operation and coordination as between the States, the Union Territories and the Union, particularly in respect of economic and social development. The creation of the Zonal Councils was a logical outcome of the reorganisation of the States on a linguistic basis. For, if the cultural and economic affinity of linguistic States with their contiguous States was to be maintained and their common interests were to be served by co-operative action, a common meeting ground of some sort was indispensable. The object of these Councils, as Pandit Nehru envisaged it, is to "develop the habit of co-operative working". The presence of a Union Minister, nominated by the Union Government, in

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each of these Councils (and the Chief Ministers of the States concerned) also furthers co-ordination and national integration through an extra-constitutional advisory organisation, without undermining the autonomy of the States. If properly worked, these Councils would thus foster the 'federal sentiment' by resisting the separatist tendencies of linguism and provincialism.

- (i) The Central Zone, comprising the States of Uttar Pradesh and Madhya Pradesh.
- (ii) The Northern Zone, comprising the States of Haryana, Himachal Pradesh, Punjab, Rajasthan, Jammu & Kashmir, and the Union Territories of Delhi & Chandigarh.
- (iii) The Eastern Zone, comprising the States of Bihar, West Bengal, Orissa and Sikkim.
- (iv) The Western Zone, comprising the States of Gujarat, Maharashtra and Goa and the Union Territories of Dadra & Nagar Haveli; Daman & Diu.
- (v) The Southern Zone, comprising the States of Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, and the Union Territory of Pondicherry.

Each Zonal Council consists of the Chief Minister and two other Ministers of each of the States in the Zone and the Administrator in the case of a Union Territory. There is also provision for holding joint meetings of two or more Zonal Councils. The Union Home Minister has been nominated to be the common chairman of all the Zonal Councils.

The Zonal Councils, as already stated, discuss matters of common concern to the States and Territories comprised in each Zone, such as, economic and social planning, border disputes, inter-State transport, matters arising out of the reorganisation of States and the like, and give advice to the Governments of the States concerned as well as the Government of India.²

Besides the Zonal Councils, there is a North-Eastern Council, set up under the North-Eastern Council Act, 1971, to deal with the common problems of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram.

River Board.

(b) The River Boards Act, 1956, provides for the establishment of a River Board for the purpose of advising the Governments interested in relation to the regulation or development of an inter-State river or river valley.

Water Disputes Tribunal.

(c) The inter-State Water Disputes Act, 1956, provides for the reference of an inter-State river dispute for arbitration by a Water Disputes Tribunal, whose award would be final according to Art. 262(2).

II. FREEDOM OF INTER-STATE TRADE AND COMMERCE

The great problem of any federal structure is to minimise inter-State barriers as much as possible, so that the people may feel that they are members of one nation, though they may, individually, be residents of any of the Units of the Union. One of the means to achieve this object is to

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guarantee to every citizen the freedom of movement and residence throughout the country. Our Constitution guarantees this right by Art. 19(l)(d) & (e).

Need for the Freedom of Trade and Commerce.

No less important is the freedom of movement or passage of commodities and of commercial transactions between one part of the country and another. The progress of the country as a whole also requires free flow of commerce and intercourse as between different parts, without any barrier. This is particularly essential in a federal system. This freedom is sought to be secured by the provisions [Arts. 301—307] contained in Part XIII of our Constitution. These provisions, however, are not confined to inter-State freedom but include intra-State freedom as well. In other words, subject to the exceptions laid down in this Part, no restrictions can be imposed upon the flow of trade, commerce and intercourse, not only as between one State and another but as between any two points within the territory of India whether any State border has to be crossed or not.

Article 301 thus declares—

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

Art. 303(1) declares that neither the Parliament nor the State Legislature shall have power to make any law giving, or authorising the giving of, any preference to one State over another; or making or authorising the making of, any discrimination between one State and another, in the field of trade, commerce or intercourse. Hence, if a State prohibits the sale of lottery tickets of others and promotes that of its own, it would be discriminatory and violative of Art. 303.3

The limitations imposed upon the above freedom by the other provisions of Part XIII are—

(a) Non-discriminatory restrictions may be imposed by Parliament, in the public interest [Art. 302].

By virtue of this power, Parliament has enacted the Essential Commodities Act, 1955, which empowers, 'in the interest of the general public', the Central Government to control the production, supply and distribution of certain 'essential commodities', such as coal, cotton, iron and steel, petroleum.

(b) Even discriminatory or preferential provisions may be made by Parliament, for the purpose of dealing with a scarcity of goods arising in any part of India [Art. 303(2)].

(c) Reasonable restrictions may be imposed by a State "in the public interest" [Art. 304(b)].

(d) Non-discriminatory taxes may be imposed by a State on goods imported from other States or Union Territories, similarly as on intra-State goods [Art. 304(a)].

(e) The appropriate Legislature may make a law [under Art. 19(6)(ii)] for the carrying on by the State, or by a corporation owned or controlled by

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the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Freedoms under Arts. 19(1)(g) and 301.

Before leaving this topic, we should notice the difference in the scope of the provisions of Arts. 19(1)(g) and 301 both of which guarantee the freedom of trade and commerce.

Though this question has not been finally settled, it may be stated broadly that Art. 19(1)(g) looks at the freedom from the standpoint of the individual who seeks to carry on a trade or profession and guarantees such freedom throughout the territory of India subject to reasonable restrictions, as indicated in Art. 19(5). Article 301, on the other hand, looks at the freedom from the standpoint of the movement or passage of commodities or the carrying on of commercial transactions between one place and another, irrespective of the individuals who may be engaged in such trade or commerce. The only restrictions that can be imposed on the freedom declared by Art. 301 are to be found in Arts. 302—305. But if either of these freedoms be restricted, the aggrieved individual⁴ or even a State⁵ may challenge the constitutionality of the restriction, whether imposed by an executive order or by legislation.⁴ When there is a violation of Art. 301 or 304, there would ordinarily be an infringement of an individual's fundamental right guaranteed by Art. 19(1)(g), in which case, he can bring an application under Art. 32, even though Art. 301 or 304 is not included in Part III as a fundamental right.⁶

REFERENCES

1. India, 1982, p. 101.
2. After a lapse of some three years, sittings of Zonal Councils have been revived from 1978 [STATESMAN, 8-9-1978, p. 9]. Yet, it must be said that this scheme has not been fully utilised [see Author's Comparative Federalism, 1987, pp. 574ff.].
3. B.R. Enterprises v. State of U.P., (1999) 9 S.C.C. 700.
4. Atiabari Tea Co. v. State of Assam, A. 1961 S.C. 232; Automobile Transport v. State of Rajasthan, A. 1962 S.C. 1406.
5. State of Rajasthan v. Mangilal, (1969) 2 S.C.C. 710 {713}; State of Assam v. Labanya Prabha, A. 1967 S.C. 1574 (1578).
6. Syed Ahmed v. State of Mysore, A. 1975 S.C. 1443.

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CHAPTER 28 EMERGENCY PROVISIONS

FEDERAL government, according to Bryce, means weak government because it involves a division of power. Every modern federation, however, has sought to avoid this weakness by providing for the assumption of larger powers by the federal government whenever unified action is necessary by reason of emergent circumstances, internal or external. But while in countries like the United States this expansion of federal power takes place through the wisdom of judicial interpretation, in India, the Constitution itself provides for conferring extraordinary powers upon the Union in case of different kinds of emergencies. As has been stated earlier, the Emergency provisions of our Constitution enable the federal government to acquire the strength of a unitary system whenever the exigencies of the situation so demand.

Different kinds of Emergencies.

The Constitution provides for three different kinds of abnormal situations which call for a departure from the normal governmental machinery set up by the Constitution:— viz., (i) An emergency due to war, external aggression or armed rebellion¹ [Art. 352]. This may be referred to as 'national emergency', to distinguish it from the next category, (ii) Failure of constitutional machinery in the States [Art. 356]. (iii) Financial emergency [Art. 360].

An 'armed rebellion' poses a threat to the security of the State as distinguished from 'internal disturbance' contemplated under Art. 355.2

Where the Constitution simply uses the expression 'Proclamation of Emergency', the reference is [Art. 366(18)] to a Proclamation of the first category, i.e., under Art. 352.

42nd and 44th Amendments.

The Emergency provisions in Part XVIII of the Constitution [Arts. 352- 360] have been extensively amended by the 42nd Amendment (1976) and the 44th Amendment (1978) Acts, so that the resultant position may be stated for the convenience of the reader, as follows:

I. A 'Proclamation of Emergency' may be made by the President at any time he is satisfied that the security of India or any part thereof has been threatened by war, external aggression or armed rebellion¹ [Art. 352]. It may be made even before the actual occurrence of any such disturbance, e.g., when external aggression is apprehended.

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A. Proclamation of Emergency.

An 'Emergency' means the existence of a condition whereby the security of India or any part thereof is threatened by war or external aggression or armed rebellion.¹ A state of emergency exists under the Constitution when the President makes a 'Proclamation of Emergency'. The actual occurrence of war or any armed rebellion, is not necessary to justify a Proclamation of Emergency of the President. The President may make such a Proclamation if he is satisfied there is an imminent danger of such external aggression or armed rebellion. But no such Proclamation can be made by the President unless the Union Ministers of Cabinet rank, headed by the Prime Minister, recommend to him, in writing, that such a Proclamation should be issued [Art. 352(3)].

While the 42nd Amendment made the declaration immune from judicial review, that fetter has been removed by the 44th Amendment, so that the constitutionality of the Proclamation can be questioned in a Court on the ground of mala fides³, [see p. 344, "JUDICIAL REVIEW"]

Every such Proclamation must be laid before both Houses of Parliament and shall cease to be in operation unless it is approved by resolutions of both Houses of Parliament within one month from the date of its issue.

Until the 44th Amendment of 1978, there was no Parliamentary control over the revocation of a Proclamation, once the issue of the Proclamation had been approved by resolutions of the Houses of Parliament.

After the 44th Amendment, a Proclamation under Art. 352 may come to an end in the following ways:

How a Proclamation may terminate.

(a) On the expiry of one month from its issue, unless it is approved by resolutions of both Houses of Parliament before the expiry of that period. If the House of the People is dissolved at the date of issue of the Proclamation or within one month thereof, the Proclamation may survive until 30 days from the date of the first sitting of the House after its reconstitution, provided the Council of States has in the meantime approved of it by a resolution [Cl. (4)].

(b) It will get a fresh lease of six months from the date it is approved by resolutions of both Houses of Parliament [Cl. 5], so that it will terminate at the end of six months from the date of last such resolution.

(c) Every such resolution under Cls. (4)-(5), must be passed by either House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting [Cl. (6)].

(d) The President must issue a Proclamation of revocation any time that the House of the People passes a resolution disapproving of the issue or continuance of the Proclamation [Cl. (7)]. For the purpose of convening a special sitting of the House of the People for passing such a resolution of disapproval, not less than 1/10 of the Members of the House may give a notice in writing to the Speaker or to the President (when the House is not in session) to convene a special sitting of the House for this purpose. A

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special sitting of the House shall be held within 14 days from the date on which the notice is received by the Speaker or as the case may be by the President [Cl. (8)].

It may be that an armed rebellion or external aggression has affected only a part of the territory of India which is needed to be brought under greater control. Hence, it has been provided, by the 44th Amendment, that a Proclamation under Art. 352 may be made in respect of the whole of India or only a part thereof.

The Executive and the Legislature of the Union shall have extraordinary powers during an emergency.

The effects of a Proclamation of Emergency may be discussed under four heads—(i) Executive; (ii) Legislative.; (iii) Financial; and (iv) As to Fundamental Rights.

(i) Executive. When a Proclamation of Emergency has been made, the executive power of the Union shall, during the operation of the Proclamation, extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised [Art. 353(a)].

In normal times, the Union Executive has the power to give directions to a State, which includes only the matters specified in Arts. 256-257.

Effects of Proclamation of Emergency.

But under a Proclamation of Emergency, the Government of India shall acquire the power to give directions to a State on 'any' matter, so that though the State Government will not be suspended, it will be under the complete control of the Union Executive, and the administration of the country insofar as the Proclamation goes, will function as under a unitary system with local sub-divisions.

(ii) Legislative, (a) While a Proclamation of Emergency is in operation, Parliament may, by law, extend the normal life of the House of the People (5 years) for a period not exceeding one year at a time and not extending in any case beyond a period of 6 months after the Proclamation has ceased to operate [Proviso to Art. 83(2), ante]. (This power also was used by Mrs. Gandhi in 1976—Act 109 of 1976).

(b) As soon as a Proclamation of Emergency is made, the legislative competence of the Union Parliament shall be automatically widened and the limitation imposed as regards List II, by Art. 246(3), shall be removed. In other words, during the operation of the Proclamation of Emergency, Parliament shall have the power to legislate as regards List II (State List) as well [Art. 250(1)]. Though the Proclamation will not suspend the State Legislature, it will suspend the distribution of legislative powers between the Union and the State, so far as the Union is concerned,—so that the Union Parliament may meet the emergency by legislation over any subject as may be necessary as if the Constitution were unitary.

(c) In order to carry out the laws made by the Union Parliament under its extended jurisdiction as outlined above, Parliament shall also have the power to make laws conferring powers, or imposing duties (as may be necessary for the purpose), upon the Executive of the Union in respect of

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any matter, even though such matter normally belonged to State jurisdiction [Art. 353(b)].

(iii) Financial. During the operation of the Proclamation of Emergency the President shall have the constitutional power to modify the provisions of the Constitution relating to the allocation of financial resources [Arts. 268-279] between the Union and the States, by his own Order. But no such Order shall have effect beyond the financial year in which the Proclamation itself ceases to operate, and, further, such Order of the President shall be subject to approval by Parliament [Art. 354].

(iv) As regards Fundamental Rights. Articles 358-359 lay down the effects of a Proclamation of Emergency upon fundamental rights. As amended up to 1978, by the 44th Amendment Act, the following results emerge—

I. While Art. 358 provides that the State would be free from the limitations imposed by Art. 19, so that these rights would be non-existent against the State during the operation of a Proclamation of Emergency, under Art. 359, the right to move the Courts for the enforcement of the rights or any of them, may be suspended, by Order of the President.

II. While Art. 359 would apply to an Emergency declared on any of the grounds specified in Art. 352, i.e., war, external aggression or armed rebellion, the application of Art. 358 is confined to the case of Emergency on grounds of war or external aggression only.

III. While Art. 358 comes into operation automatically to suspend Art. 19 as soon as a Proclamation of Emergency on the ground of war or external aggression is issued, to apply Art.

359 a further Order is to be made by the President, specifying those Fundamental Rights against which the suspension of enforcement shall be operative.

IV. Art. 358 suspends Art. 19; the suspension of enforcement under Art. 359 shall relate only to those Fundamental Rights which are specified in the President's Order, excepting Arts. 20 and 21. In the result, notwithstanding an Emergency, access to the Courts cannot be barred to enforce a prisoner's or detenu's right under Art. 20 or 21.4

V. Neither Art. 358 nor 359 shall have the effect of suspending the operation of the relevant fundamental right unless the law which affects the aggrieved individual contains a recital to the effect that "such law is in relation to the Proclamation of Emergency". In the absence of such recital in the law itself, neither such law nor any executive action taken under it shall have any immunity from challenge for violation of a fundamental right during operation of the Emergency [Cl. (2) of Art. 358 and Cl. (IB) of Art. 359].

Uses of the Emergency Powers.

A. The first Proclamation of Emergency under Art. 352 was made by the President on October 26, 1962, in view of the Chinese aggression in the NEFA. It was also provided by a Presidential Order, issued under Art. 359, that a person arrested or imprisoned under the Defence of India Act would not be entitled to move any Court for the enforcement of any of his Fundamental

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Rights under Art. 14, 19 or 21. This Proclamation of Emergency was revoked by an order made by the President on January 10, 1968.

B. The second Proclamation of Emergency under Art. 352 was made by the President on December 3, 1971 when Pakistan launched an undeclared war against India.

A Presidential Order under Art. 359 was promulgated on December 25, 1974, in view of certain High Court decisions releasing some detenus under the Maintenance of Internal Security Act, 1971 for smuggling operations. This Presidential Order suspended the right of any such detenu to move any Court for the enforcement of his fundamental rights under Arts. 14, 21 and 22, for a period of six months or during the continuance of the Proclamation of Emergency of 1971, whichever expired earlier.

Though there was a ceasefire on the capitulation of Pakistan in Bangladesh in December, 1971, followed by the Shimla Agreement between India and Pakistan, the Proclamation of 1971 was continued, owing to the persistence of hostile attitude of Pakistan. It was thus in operation when the third Proclamation of June 25, 1975 was made.

C. While the two preceding Proclamations under Art. 352 were made on the ground of external aggression, the third Proclamation of Emergency under Art. 352 was made on June 25, 1975, on the ground of "internal disturbance".5

The "internal disturbance", which was cited in the Press Note relating to the Proclamation, was that 'certain persons have; been inciting the Police and the Armed Forces against the discharge of their duties and their normal functioning'.⁵ Both the second and third proclamations were revoked on 21st March, 1977.

Internal Disturbance no more ground of Emergency.

It should be noted that after 1978, it is not possible to issue a Proclamation of Emergency on the ground of 'internal disturbance', short of an armed rebellion, for, the words 'internal disturbance' have been substituted by the words 'armed rebellion', by the Constitution (44th Amendment) Act, 1978.¹

II. The Constitution provides for carrying on the administration of a State in case of a failure of the constitutional machinery.

B. Proclamation of Failure of Constitutional Machinery in a State.

(a) It is a duty of the Union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution [Art. 355]. So, the President is empowered to make a Proclamation, when he is satisfied that the Government of a State cannot be carried on in accordance with the provisions of the Constitution, either on the report of the Governor of the State or otherwise [Art. 356(1)]. (For uses of this power, see below.)

(b) Such Proclamation may also be made by the President where any State has failed to comply with, or to give effect to, any directions given by the Union, in the exercise of its executive power to the State [Art. 365] .⁶

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By such Proclamation, the President may—

(a) assume to himself all or any of the functions of the Executive of the State or of any other authority save the High Court; and

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. In short, by such Proclamation, the Union would assume control over all functions in the State administration, except judicial.

When the State Legislature is thus suspended by the Proclamation, it shall be competent—

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him; (b) for the President to authorise, when the House of the People is not in session, expenditure from the Consolidated Fund of the State pending the sanction of such expenditure from Parliament; and (c) for the President to promulgate Ordinances for the administration of the State when Parliament is not in session [Art. 357].

The duration of such Proclamation shall ordinarily be for two months. If, however, the Proclamation was issued when the House of the People was dissolved or dissolution took place during the period of the two months above-mentioned, the Proclamation would cease to operate on the expiry of 30 days from the date on which the reconstituted House of the People first met, unless the Proclamation is approved by Parliament. The two months' duration of such Proclamation can be extended by resolutions passed by both Houses of Parliament for a period of six months at a time, subject to a maximum duration of three years [Art. 356(3)-(4)]; but if the duration is sought to be extended beyond one year, two other conditions, as inserted by the 44th Amendment Act, 1978, have to be satisfied, namely, that—

Conditions for extension of duration beyond one year.

(a) a Proclamation of Emergency is in operation, in the whole of India or as the case may be, in the whole or any part of the State, at the time of the Posing of such duration beyond resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under Cl. (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

By the 42nd Amendment, 1976, the President's satisfaction for the making of a Proclamation under Art. 356 had been made immune from judicial review; but the 44th Amendment of 1978 has removed that fetter, so that the Courts may now interfere if the Proclamation is mala fide³ or the reasons disclosed for making the Proclamation have no reasonable nexus with the satisfaction of the President³

Judicial Review.

The Author's views expressed above have been upheld by the Supreme Court in S.R. Bommai's case⁷ where a nine-Judge Bench held that the validity of a Proclamation under Art 356 can be judicially reviewed to examine (i) whether it was

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issued on the basis of any material, (ii) whether the material was relevant, (ill) whether it was issued mala fide.

The Proclamation in case of failure of the constitutional machinery differs from a Proclamation of 'Emergency' on the following points:

Arts. 352 and 356 compared.

(i) A Proclamation of Emergency may be made by the President only when the security of India or any part thereof is threatened by war, external aggression or armed rebellion. A Proclamation in respect of failure of the constitutional machinery may be made by the President when the

constitutional government of State cannot be carried on for any reasons, not necessarily connected with war or armed rebellion.

(ii) When a Proclamation of Emergency is made, the Centre shall get no power to suspend the State Government or any part thereof. The State Executive and Legislature would continue in operation and retain their powers. All that the Centre would get are concurrent powers of legislation and administration of the State.

But under a Proclamation in case of failure of the constitutional machinery, the State Legislature would be suspended and the executive authority of the State would be assumed by the President in whole or in part. [This is why it is popularly referred to as the imposition of the 'President's rule'.]

(iii) Under a Proclamation of Emergency, Parliament can legislate in respect of State subjects only by itself; by under a Proclamation of the other kind, it can delegate its powers to legislate for the State,—to the President or any other authority specified by him.

(iv) In the case of a Proclamation of failure of constitutional machinery, there is a maximum limitation to the power of Parliament to extend the operation of the Proclamation, namely, three years [Art. 356(4), Proviso 1], but in the case of a Proclamation of Emergency, it may be continued for a period of six months by each resolution of the Houses of Parliament approving its continuance, so that if Parliament so approves, the Proclamation may be continued indefinitely as long as the Proclamation is not revoked or the Parliament does not cease to make resolutions approving its continuance [new Cl. (5) to Art. 352, inserted by the 44th Amendment Act, 1978].

Use of the Power.

It is clear that the power to declare a Proclamation of failure of constitutional machinery in a State has nothing to do with any external aggression or armed rebellion; it is an extraordinary power of the Union to meet a political breakdown in any of the units of the federation [or the failure by such Unit to comply with the federal directives [Art. 365)], which might affect the national strength. It is one of the coercive powers at the hands of the Union to maintain the democratic form of government, and to prevent factional strifes from Paralysing the governmental machinery, in the States. The importance of this power in the political system of India can hardly be overlooked in view of the fact that it has been used not less than 108 times during the first 50 years of the working of the Constitution (till March 2001).

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For details see Table XXI.

Frequent and improper use of Art. 356, deprecated.

From the foregoing history of the use of the power conferred upon the Union under Art. 356, it is evident that it is a drastic coercive power which takes nearly the substance away from the normal

federal polity prescribed by the Constitution. It is, therefore, to be always remembered that the provision for such drastic power was defended by Dr. Ambedkar in the Constituent Assembly⁸ on the plea that the use of this drastic power would be a matter of the last resort:

.. the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead-letter. If at all they are brought into operation, I hope the President who is endowed with this power will take proper precautions before actually suspending the administration of the Province.

It is natural, therefore, that the propriety of the use of this provision (which was envisaged by Dr. B.R. Ambedkar⁸ to 'remain a dead-letter'), on numerous occasions (more than any other provision of the Constitution), has evoked criticism from different quarters. The judgment of the Supreme Court in the Rajasthan case⁶ also did not lay down the law correctly. The views of the Author were expressed in detail in the 16th Edition of this book (at pp. 336-37). In view of S.R. Bommai's case⁷ (nine-Judge Bench) the comments have been replaced by the law as declared by the Supreme Court, which affirm the Author's view.

Power under Art. 356 must be used rarely.

In S.R. Bommai's case⁷ the Court has clearly subscribed to the view that the Power under Art. 356 is an exceptional power and has to be resorted to only occasionally to meet the exigencies of special situations. The Court quoted the Sarkaria Commission Report to give examples of situations when such power should not be used. It made it clear that Art. 356 cannot be invoked for superseding a duly constituted ministry and dissolving the Assembly on the sole ground that in the elections to the Lok Sabha, the ruling party in the State suffered a massive defeat

After Bommai's case⁷ it is settled that the Courts possess the power to review the Proclamation on the grounds mentioned above [see under "JUDICIAL REVIEW", ante]. This will surely have a restraining effect on the tendency to use the power on flimsy grounds.

President not to take irreversible steps under Art. 356(1)(a), (b) & (c).

In S.R. Bommai's case⁷ it has been pronounced that till the Proclamation is approved by both Houses of Parliament, it is not permissible for the President to take any irreversible action under Cls. (a), (b) and (c) of Art. 356(1). Hence the Legislative Assembly of a State cannot be dissolved before the Proclamation is approved by both Houses of Parliament.

Court's Power to restore status quo ante.

If the Court holds the Proclamation to be invalid then in spite of the fact that it has been approved by the Parliament, the Court has the Power to restore, in its discretion, status quo ante, i.e. the Court may order that the dissolved Ministry and Assembly will be revived.⁷

Illustration of cases where resort to Art. 356 would not be proper

Some of the situations which do not amount to failure of constitutional machinery are given below. They are based on the report of the Sarkaria Commission and have the approval of the Court in S.R. Bommai's case.⁹

(1) a situation of maladministration in a State, where a duly constituted ministry enjoys support of the Assembly.

(2) where a Ministry resigns or is dismissed on losing majority support and the Governor recommends imposition of President's Rule without exploring and possibility of installing an alternative government.

(3) where a Ministry has not been defeated on the floor of the House, the Governor on his subjective assessment recommends supersession and imposition of President's Rule.

(4) where in general elections to the Lok Sabha the ruling party in the State has suffered a massive defeat.

(5) where there is situation of internal disturbance but all possible measures to contain the situation by the Union in discharge of its duty, under Art. 355, have not been exhausted.

(6) where no prior warning or opportunity is given to the State Government to correct itself in cases where directives were issued under

Arts. 256, 257 etc.

(7) where the power is used to sort out intra-party problems of the ruling party.

(8) the power cannot be legitimately exercised on the sole ground of stringent financial exigencies of the State.

(9) the power cannot be invoked merely on the ground that there are serious allegations of corruption against the Ministry.

(10) exercise of the power for a purpose extraneous or irrelevant to those which are permitted by the Constitution would be vitiated by legal mala fides.

Proper occasions for use suggested.

A proper occasion for use of this power would, of course, be when a Ministry resigns after defeat in the Legislature and no other Ministry commanding a majority in the Assembly can at once be formed. Dissolution of the Assembly may be a radical solution, but, that being expensive, a resort to Art. 356 may be made to allow the state of flux in the Assembly to subside so as to obviate the need for a dissolution, if possible. A similar situation would arise where the party having a majority declines to form a Ministry and the Governor fails in his attempt to find a coalition Ministry. Another obviously proper use is mentioned in Art. 365 of the Constitution itself; but curiously, none of the numerous past occasions specifically refers to this contingency.

The provision in Art. 365 relates to the failure of a State Government to carry out the directives of the Union Government which the latter has the authority under the Constitution to issue (e.g., under Arts. 256,

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257). The Union may also issue such a directive under the implied power conferred by the latter part of Art. 355, "to ensure that the government of every State is carried on in accordance with the provisions of this Constitution".⁶

Effect of 44th Amendment on Art. 356.

The only change that the 44th Amendment Act, 1978 (sponsored by the Janata Government), has made in this Article, is to substitute Cl. (5) to limit the duration of a Proclamation made under Art. 356 to a period of one year unless a Proclamation of Emergency under Art. 352 is in operation and the Election Commission certifies that it is not possible to hold elections to the Legislative Assembly of the State concerned immediately, in which case, it may be extended up to three years, by successive resolutions for continuance being passed by both Houses of Parliament.

It is to be noted that the foregoing amendment has not specified any conditions or circumstances under which the power under Art. 356 can be used. Hence, in the light of the Rajasthan decision,⁶ no legal challenge could be offered when Mrs. Gandhi repeated the Janata experiment in February, 1980, in the same nine States, on the same ground, viz., that the Janata Party, which was in power in those States, was routed in the Lok Sabha election.

Proclamation of Financial Emergency.

III. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect [Art. 360(1)].

The consequences of such a declaration are :

(a) During the period any such Proclamation is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions.

(b) Any such direction may also include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.

(c) It shall be competent for the President during the period that any such Proclamation is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts [Art. 360(3)-(4)].

The duration of such Proclamation will be similar to that of a Proclamation of Emergency, that is to say, it shall ordinarily remain in force for a period of two months, unless before the expiry of that period, it is approved

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by resolutions of both Houses of Parliament. If the House of the People is dissolved within the aforesaid period of two months, the Proclamation shall cease to operate on the expiry of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiry of that period of thirty days it has been approved by both Houses of Parliament. It may be revoked by the President at any time, by making another Proclamation.

No use of Art. 360 has been made up to the end of 2000.

REFERENCES

1. Since the amendment of Art. 352 in 1978, it is no longer possible to make a Proclamation of Emergency, on the ground of mere 'internal disturbance' which does not constitute an 'armed rebellion'.
2. Naga People's Movement of Human Rights v. Union of India, (1998) 2 S.C.C. 109 (paras 31 and 32); A.I.R. 1998 S.C. 431.
3. Cf. State of Rajasthan v. Union of India, A. 1977 S.C. 1361 (paras 124, 144); Minerva Mills v. Union of India, A. 1980 S.C. 1789 (paras 103-04); S.R. Bommai v. Union of India, (1994) 3 S.C.C. I.
4. This amendment, saving Arts. 20 and 21 from the mischief of Art 359, has been made by the 44th Amendment Act, 1978 in order to supersede the view taken in the case of A.D.M. v. Shukla, A. 1976 S.C. 1207, that when Art. 21 is suspended by an Order under Art 359, the person imprisoned or detained "loses his locus standi to regain his liberty on any ground".
5. An official version of the reasons which impelled Mrs. Gandhi to assume that 'the security of India was threatened by internal disturbances' may be had from India, 1976, pp. i-ii. This Proclamation was revoked on March 21, 1977.
6. State of Rajasthan v. Union of India, A. 1977 S.C. 1361 (paras 58-59).
7. S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1.
8. C.A. Debates IX, p. 177.

9. Ibid., f.n. 7, para 82.

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PART IX Miscellaneous

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CHAPTER 29 RIGHTS AND LIABILITIES OF THE GOVERNMENT AND PUBLIC SERVANTS

Property of the Union and the State.

OUR Constitution views the Union and the States as juristic persons, capable of owning and acquiring property, making contracts, carrying on trade or business, bringing and defending legal actions, just as private persons, subject to modifications specified in the Constitution itself.

The Union and a State can acquire property in several ways—

(a) Succession. Broadly speaking, the property, assets, rights and liabilities that belonged to the Dominion of India or a Governor's Province or an Indian State at the commencement of the Constitution devolved by virtue of the Constitution, on the Union or the corresponding State under the Constitution [Arts. 294-295].

(b) Bona Vacantia. Any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall in any other case, vest in the Union [Art. 296]. Thus, the disputed property of a person dying a civil death (not heard of for more than seven years) without leaving any heir, would vest in the Gaon Sabha and should be recorded in its name even if no objection has been filed by it.¹

(c) Things underlying the Ocean. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest only in the Union [Art. 297].

(d) Compulsory Acquisition or Requisition by Law. Both the Union and State Legislatures shall be competent to compulsorily acquire or requisition property by making law, under Entry 42, List III, Sch. VII.

The constitutional obligation to pay compensation has been abolished, by the omission of Art. 31(2) by the 44th Amendment Act, 1978.

(e) Acquisition under Executive Power. The Government of India or a State may make contracts and acquire property, say by purchase or exchange, just as a private individual, in exercise of their respective powers, and for the purposes of their respective Governments [Arts. 298] and the

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decision of the government in granting contracts/licences to private bodies/companies can be questioned only on the grounds of bad faith, based on irrational or irrelevant considerations, non-compliance with the prescribed procedure or violation of any constitutional or statutory provision.² But for compulsorily taking a person's property, a law will be required to authorise it [Art. 300A].

Power to carry on Trade.

The Union or a State Government is competent to carry on any trade or business and make contracts for that, purpose, in exercise of its executive power. Such business shall, however, be subject to regulation by the competent Legislature. That is to say, if the Union Government takes up a business relating to a subject (say, agriculture) which is included in the State List, the business will be subject to the legislative jurisdiction of the State Legislature [Art. 298, Prov. (a)].

The Union or a State, while legislating with respect to a trade or business carried on by itself, is immune from a constitutional limitation to which it would have been otherwise subject. If an ordinary law excludes a citizen from carrying on a particular business, wholly or partially, the reasonableness of such law has to be tested under Art. 19(6). Thus, if the State creates a monopoly in favour of a private trade without any reasonable justification, such law is liable to be held unconstitutional by the Courts. But if a law creates a monopoly in favour of the State itself as a trader, whether to the partial or complete exclusion of citizens,³ the reasonableness of such law cannot be questioned by the Courts [Exception (ii) to Art. 19(6)].

In short, it is competent for the Union or a State not only to enter into a bade but also to create a monopoly in its own favour in respect of such trade. This is what is popularly known as the 'nationalisation' of a trade.⁴

Power to borrow Money.

The power of either Government to take loans has already been dealt with.

Formalities for Government Contracts.

As stated already, both the Union and State Governments have the power to enter into contracts like private individuals, in relation to the respective spheres of their executive power. But this contractual power of the Government is subject to some special formalities required by the Constitution, in addition to those laid down by the Law of Contract which governs any contract made in India.

The reason for imposing these special conditions is that contracts by Government raise some problems which do not or cannot possibly arise in the case of contracts entered into by private persons. Thus, there should be a definite procedure according to which contracts must be made by its agents, in order to bind the Government; otherwise public funds may be depleted by clandestine contracts made by any and every public servant. The formalities for contracts made in the exercise of the executive power of the Union or of a State, as laid down in Art. 299, are that the contract—

(a) must be executed by a person duly authorised by the President or Governor, as the case may be;

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(b) must be executed by such person 'on behalf of the President or Governor, as the case may be;

(c) must be 'expressed to be made by' the President or Governor, as the case may be.

If any of these conditions are not complied with, the contract is not binding on or enforceable against the Government,⁵ though a suit may lie against the officer who made the contract, in his personal capacity.

Suability of the Union and a State.

The right of the Government to sue and its liability to be sued, like a private individual in the ordinary Courts, is also subject to certain special considerations.

Article 300(1) of the Constitution says—

"The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to (their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted."

This Article, however, does not give rise to any cause of action, but merely says that the State can sue or be sued, as a juristic personality, in matters where a suit would lie against the Government had the Constitution been enacted, subject to legislation by the appropriate Legislature. No such legislation has, however, been undertaken so far. For the substantive law as to the liability of the State, therefore, we have to refer to the law as it stood before the commencement of the Constitution.

I. Right to Sue.

So far as the right to sue is concerned, the Government of India may sue by the name of the 'Union of India', while a State may sue by the name of that State, e.g., 'State of Bihar'. Either Government may sue not only a private person but also another Government. Thus, the Union may bring a suit against one or more States; while a State may sue another State or the Union [Art. 131]- It is to be noted that when the suit is against a private individual, the suit will have to be instituted in the Court of the lowest jurisdiction, according to the law of procedure; but in the case of a suit between two Governments, it must be instituted in the highest tribunal, namely, the Supreme Court, which has exclusive original jurisdiction over such federal litigation.

II. Liability to be Sued.

In this matter, a distinction is to be made between contractual liability and the liability for torts or civil wrongs, because such distinction has been observed in India since the days of the East India Company, up to the commencement of the Constitution, and that position is maintained by Art. 300 of the Constitution, subject to legislation by Parliament.

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(a) Contract. In India, direct suit had been allowed against the East India Company, the Secretary of State or the existing Governments in matters of contract, instead of a petition of right by which a British subject sought relief from the Crown, as a matter of grace. The Government of India Acts expressly empowered the Government to enter into contracts with private individuals and the corresponding provision in the Constitution in Art. 299(1) maintains that position.

Subject to the formalities prescribed by Art. 299 and to statutory conditions or limits, the contractual liability of the State, under our Constitution, is the same as that of an individual under the ordinary law of contract.

(b) Torts. The liability of the State under the existing law, for actionable wrongs committed by its servants, cannot be so simply stated as in the case of contracts. The state of the law is unnecessarily complicated by reason of its being founded on the position of the British Crown under the Common Law and of the East India Company upon its supposed representation of the sovereignty of the Crown, both of which have become archaic, owing to the changes in history and law.

Even in England, the Common Law maxim that the 'King can do no wrong' has been superseded by the Crown Proceedings Act, 1947. Nevertheless, in the absence of any such corresponding legislation, Courts in India have no alternative than to follow the existing case-law which is founded on the old English theory of immunity of the State, founded on the maxim 'King can do no wrong'.

The existing law in India, thus, draws a distinction between the sovereign and non-sovereign functions of the Government and holds that Government cannot be sued for torts committed by the Government or its officers in the exercise of its 'sovereign' functions.

Thus, it has been held—

(A) No action lies against the Government for injury done to an individual in the course of exercise of the sovereign functions to the Government, such as the following:

(i) Commandeering goods during war; (ii) making or repairing a military road; (iii) administration of justice; (iv) improper arrest, negligence or trespass by Police officers; (v) wrongs committed by officers in the performance of duties imposed upon them by the Legislature, unless, of course, the statute itself prescribes the limits or conditions under which the executive acts are to be performed; or the wrongful act was expressly authorised or ratified by the State; (vi) loss of movables from Government custody owing to negligence of officers; (vii) payment of money in custody of Government to a person other than the rightful owner, owing to negligence of an officer in the exercise of statutory duty, where Government does not derive any benefit from such transaction, e.g., by a Treasury Officer paying money to a wrong person on a forged cheque owing to negligence in performing his statutory duty to compare the signature.

But gradually the ratio of Kasturi Lal's case⁶ and the List of sovereign functions is being limited. The Supreme Court has adopted a pro-people

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approach. In Rudul Shah⁷ in a writ petition the Court ordered compensation to be paid for deprivation of liberty. In Nagendra Rao⁸ the Supreme Court observed that no civilised system can permit an executive to play with the people of a country and claim to be sovereign. To place the State above the law is unjust and unfair to the citizen. In the modern sense the distinction between sovereign and non-sovereign functions does not exist. The ratio of Kasturi Lal⁶ is available to those rare and limited cases where the statutory authority acts as a delegate of such functions for which it cannot be sued in a Court of law.

The theory of sovereign power, propounded in Kasturi Lal case has yielded to new theories and is no longer available in a welfare state in which functions of the government are manifold, all of which cannot be said to be the activities relating to exercise of sovereign powers. Running of a railway is a commercial activity. Establishing the Yatri Niwas at various railway stations to provide lodging and boarding facilities to the passengers on payment of charges is a part of commercial activity of the Union of India which cannot be equated with the exercise of sovereign power. The employees deputed to run the Railways and to manage the establishment, including the railway stations and the Yatri Niwas, are essential components of the government machinery carrying on commercial activity. If any of such employees commits an act of tort, the Union Government can be held liable in damages to the person wronged by those employees. As observed in Common Cause, A Registered Society v. Union of India, (1999) 6 SCC 667 the efficacy of Kasturi Lal case as a binding precedent has been eroded. Hence, the Supreme Court upheld the award against the Railways of a compensation of Rs. ten lakhs by the High Court to a foreign passenger, victim of gang-rape committed by the railway employees in a room of a Railway Yatri Niwas booked in their name.⁹

Likewise the persons employed in government hospitals cannot claim sovereign immunity and the government will be liable for their tortious acts.¹⁰

(B) On the other hand, a suit lies against the Government for wrongs done by public servants in the course of transactions which a trading company or a private person could engage in such as the following:

(i) Injury due to the negligence of servants of the Government employed in a dockyard or a railway; (ii) trespass upon or damage done to private property in the course of a dispute as to right to land between Government and the private owner, even though committed in the course of a colourable exercise of statutory powers; (iii) the State is liable to be sued for restitution of the profits unlawfully made, just as a private owner, e.g., where Government retains property or moneys unlawfully seized by its officers, a suit lies against the Government for its recovery, with interest; (iv) defamation contained in a resolution issued by Government; (v) injury caused by a Government vehicle while such vehicle was not being engaged in carrying out any sovereign function,⁶ or engaged in famine relief work."

Suability of Heads of State.

Though the State itself is immune from liability in certain cases already noted owing to historical reasons, our Constitution does not grant any immunity to a public servant for his official acts which are unlawful under the ordinary

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law of the land. The only exception to this rule is a limited immunity granted to the heads of State, namely, the President and a Governor,¹² both for their political and personal acts, while in office [Art. 361].

Immunity of President or Governor for official acts.

I. Official Acts. The immunity given for official acts of the President or the Governor is absolute but it is limited only to the President and the Governor personally, and no other person can shield himself from legal liability on the plea that it was done under orders of the President or a Governor.¹²

The President or a Governor is immune from legal action and cannot be sued in a Court, whether during office or thereafter, for any act done or purported to be done by them or for any contract made [Art. 299(2)] in exercise of their powers and duties as laid down by the Constitution or by any law made there under [Art. 361(1)]. Though the President is liable to be impeached under Art. 61 and the Governors may be dismissed by the President,—for any unconstitutional act done in exercise of their official powers, no action lies in the Courts.

It follows from the rule of personal immunity that no Court can compel the President or the Governor to exercise any power or to perform any duty nor can a Court compel him to forbear exercising his power or performing his duties. He is not amenable to the writs or directions issued by any Court.

The remedy to an individual for wrongful official acts of the President or a Governor is twofold—

- (i) To bring appropriate proceedings against the respective Government itself, where such proceedings lie [Art. 361(1), Prov. 2].
- (ii) To bring an action against the public servant, individually, who has executed the wrongful order of the President or Governor, and must, therefore, answer to the aggrieved individual, under the ordinary law of crimes or civil wrongs, subject to limitations, to be explained shortly.

Position of ministers.

In this connection, it should be noted that while the Constitution grants personal immunity to the President or a Governor for official acts, no such immunity is granted to their Ministers.¹² But by virtue of the peculiar position of Ministers as regards official acts of the President or the Governor, as the case may be, it is not possible to make a Minister liable in a court of law, for any official act done in the name of the President or Governor. As pointed out earlier, the position in this respect in India differs from that in the United Kingdom. In England, every official act of the Crown must be countersigned by a Minister who is responsible to the law and the Courts for that act. But though the principle of ministerial responsibility has been adopted in our Constitution, both at the Centre and in the States, the principle of legal responsibility has not been introduced in the English sense. There is no requirement that the acts of the President or of the Governor must be countersigned by a Minister. Further, the Courts are precluded from enquiring as to what advice was tendered by the Ministers to the President or the Governor. It is clear, therefore, that the Ministers shall not be liable

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for official acts done on their advice. But there is no immunity for offences committed in their personal capacity.¹²

Personal acts during Term of Office.

II. Personal Acts. The immunity of the President or a Governor for unlawful personal acts committed by him during the term of his office is limited to the duration of such term.

(a) As regards crimes, no proceedings can be brought against them or continued while they are in office: but there is nothing to prevent such proceedings after their office is terminated¹³ by expiry of term, dismissal or otherwise.

(b) As regards civil proceedings, there is no such immunity, but the Constitution imposes a procedural condition:

Civil proceedings may be brought against the President or a Governor, in respect of their personal acts, but only if two months' notice in writing has been delivered to the President or Governor.

Suability of Public Officials.

As stated before, the Constitution makes no distinction in favour of Government servants as to their personal liability for any unlawful act done by them whether in their official or personal capacity. There is only one provision in the Constitution relating to the liability of Public servants; but the general law imposes certain conditions as regards their liability for official acts, in view of their peculiar position. These may be analysed as follows:

(i) Contract. If a contract made by a Government servant in his official capacity complies with the formalities laid down in Art. 299, it is the Government concerned which will be liable in respect of the contract and not the officer who executed the contract [Art. 299(2)].

If, however, the contract is not made in term of Art. 299(2), the officer who executed it would be personally liable under it, even though he may not have derived any personal benefit.

(ii) Torts. As stated earlier, in India, the Government is not liable to answer in damages for its 'sovereign' acts. In such cases, the officer through whom such act is done is also immune.

In other cases, action will lie against the Government as well as the officer personally, unless—

(a) the act has been done,, bona fide, in the performance of duties imposed by a statute;

(b) he is a judicial officer, within the meaning of the Judicial Officers' Protection Act, 1850. This Act gives absolute immunity from a civil proceeding to a judicial officer for acts done in the discharge of his official duty.¹³

But any civil action, whether in contract or in torts, against a public officer "in respect of any act purported to be done by such public officer in his official capacity", is subject to the procedural limitations in ss. 80-82 of the Code of Civil Procedure which include a two months' notice as a condition precedent to a suit.⁴

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(iii) Crimes. The criminal liability of a public servant is the same as that of an ordinary citizen except that—

(a) There is no liability for judicial acts or for acts done in pursuance of judicial orders [ss. 77-78, Indian Penal Code].¹³

(b) Officers, other than judicial, are also immune for any act which they, by reason of some mistake of law or fact, in good faith, believed themselves to be bound by law to do [s. 76, I.P.C.].¹³

(c) Where a public servant who is not removable from his office save by or with the sanction of the Central or State Government is accused of an offence, committed by him while acting or purporting to act in the discharge of his official duty, no Court can take cognizance of such

offence without the previous sanction of the Central Government or the State Government, as the case may be \s, 197, Criminal Procedure Code].14

(iv) For acts done for the maintenance or restoration of order in an area where martial law was in force, Parliament may exempt the officers concerned from liability by validating such acts by making an Act of Indemnity [Art. 34].

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1. Sheo Nand v. Deputy Director of Consolidation, (2000) 3 S.C.C. 103 : A.I.R. 2000 S.C. 1141.
2. Delhi Science Forum v. Union of India, (1996} 2 S.C.C. 405 : A.I.R. 1996 S.C. 1356.
3. Narayanappa v. State of Mysore, A. 1960 S.C. 1073 (1O78); Parbhani Transport Society v. R.T.A., A. 1960 S.C. 801.
4. Daruka v. Union of India, A. 1973 S.C. 2711; Excel Wear v. Union of India, A. 1979 S.C. 25 (para 24).
5. Bhikraj v. Union of India, A. 1962 S.C. 118; Chaudhury v. State of M.P., A. 1967 S.C. 203; State of UP. v. Murari, (1971) 2 S.C.C. 449.
6. Stale of Rajasthan v. Vidyawali, A. 1962 S.C. 933 (935); Kasturi Lal v. State of UP., A. 1965 S.C. 1039.
7. Rudul v. State of Bihar, (1983) 4 S.C.C. 141; Saheli v. Commissioner of Police, (1990) 1 S.C.C. 422 was also a case in which the State was ordered to pay compensation.
8. Nagendra Rao v. Stale of A.P., (1994) 6 S.C.C. 205. In this case the State confiscated certain goods. When the Court annulled the confiscation, the State could not return the goods because they had deteriorated. The Court held that the owner was entitled to compensation.
9. Chairman, Railway Board v. Chandrima Das, (2000) 2 S.C.C. 465 : A.I.R. 2000 S.C. 989.
10. Achutrao Haribhan Khodwa v. State of Maharashtra, (1996) 2 S.C.C. 634 : A.I.R. 1996 S.C. 2377.
11. Shyam Sunder v. Stale of Rajasthan, A. 1974 S.C. 890 (para 21).
12. The Constitution (41st Amendment) Bill, 1975 sought to amend Art. 361, to bar criminal proceedings against the President, Governor or Prime Minister even after termination of their office. But this Bill could not be passed in the Lok Sabha before Mrs. Gandhi lost office in 1977. In the result, the Prime Minister has no immunity at all, for his or her personal acts.
13. Author's Commentary on the Constitution of India, 5th Ed., Vol. V, p. 453.

14. Author's Criminal Procedure Code, 1973 (Prentice-Hall of India, p. 520).

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CHAPTER 30 THE SERVICES AND PUBLIC SERVICE COMMISSIONS

ONE of the matters which do not usually find place in a constitutional document but have been included in our Constitution is the Public Services.

Position of Civil Servants in a Parliamentary System of Government.

The wisdom of the makers of our Constitution in giving a constitutional basis to such matters as are left to ordinary legislation and administrative regulations under other Constitutions may be appreciated if we properly assess the importance of public servants in a modern democratic government.

A notable feature of the Parliamentary system of government is that while the policy of the administration is determined and laid down by ministers responsible to the Legislature, the policy is carried out and the administration of the country is actually run by a large body of officials who have no concern with politics. In the language of Political Science, the officials form the 'permanent' Executives as distinguished from the Ministers who constitute the 'political' Executive. While the political Executive is chosen from the party in majority in the Legislature and loses office as soon as that party loses its majority, the permanent Executive is appointed by a different procedure and does not necessarily belong to the party in power. It maintains the continuity of the administration and of the neutrality in politics that characterises the civil servants who constitute the permanent Executive and accounts for their efficiency. While the Ministers, generally, cannot claim any expert knowledge about the technique of administration and the details of the administrative departments, the civil servants, as a body, are supposed to be experts in the detailed working of government. One inherent vice in this system of carrying on the administration with the help of these 'permanent' civil servants is that they tend to be more and more tied to red-tape and routine and lack that responsiveness to fresh ideas which the political Executive is sure to maintain owing to their responsibility to the Legislature. But with all this inherent vice, the civil servants are indispensable to the Parliamentary form of Government.

As the Joint Select Committee on Indian Constitutional Reforms' observed—

"The system of responsible Government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure in their positions, during good behaviour, but

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required to carry out the policy upon which the Government and Legislature eventually decide."

The reason is that in the modern age, government is not only an art but also a science and, to that extent a business for experts. It has, therefore, naturally fallen into the hands of a very large army of people who have taken up the business of government, being in service of the Government, itself,—as their professional career. Since they cannot be dispensed with, the problem of a modern democracy is how to prevent them from converting the democratic system into a 'bureaucracy' or officialdom. The remedy lies not in the assumption of the work of government by the Legislature, for a direct democracy as prevailed in the ancient State is an impossibility under modern conditions. Nor does remedy lie in the assumption of the actual work of administration, as distinguished from the laying down of policies, by the Ministers or the political heads of the Departments, for, as has been already stated, the task is not only technical but enormous, and the Ministers might lose sight of the broader and serious questions of national urgency if they were to enter into the details of the day-to-day administration.

Matters which call for regulation.

The proper solution of the problem, therefore is—firstly, to select the right type of men who shall be not only efficient but also honest and who can be trusted with confidence that they would not abuse their position and would be strictly impartial, having no personal or political bias of their own and would be ready to faithfully carry out the policy once it is formulated by the government for the time being in power; secondly, to keep them under proper discipline so that they maintain the proper relationship with their employer, viz., the State; and thirdly, to ensure that for breaches of the rules of discipline, they can be brought under proper departmental action and, for breach of law, made answerable before the Courts of law. Once the interests of the State are thus secured, it is equally essential that the security of tenure of public servants who do not contravene the foregoing principles should be ensured. For, the best available talents would never be attracted unless there is a reasonable security against arbitrary action by superior officials who exercise the governmental power as to removal and discipline.

All the aforesaid objects can be achieved only if there are definite rules and proper safeguards in respect of what is broadly known as the 'conditions of service' of public servants and our Constitution seeks to lay down some basic principles in this behalf.

Power to prescribe conditions of Service.

It is not that our Constitution seeks to make detailed provisions relating to every matter concerning the Public Service. The makers of the Constitution realised that was not practicable and therefore left the recruitment and conditions of service of the public servants of the Union and of the State to be regulated by Acts of the appropriate Legislatures. Pending such legislation, however, these matters were to be regulated by Rules made by the President or by the Governor in connection with the services under the Union and the States respectively [Art. 309]. Once the legislature intervenes to enact a law, the power of the executive (the President/the Governor) is totally displaced and the Act of the legislature would have precedence over any rule made by the executive.

under Art. 3092 but no rule can be framed which affects or impairs the vested rights.³ However, these rules have equal force of law.⁴ Though already some Acts have been passed, for instance, the All-India Services Act, 1951, the larger part of the field is still covered by Rules made by the Government, not only under the Constitution, but also those existing from before (that is, made under the Government of India Acts), which are to continue to be in force until superseded by the appropriate authority. It is to be noted, however, that neither a Rule nor any Act of the Legislature made in this behalf can have any validity if its provisions are contrary to those of the Constitution. As a matter of fact, our courts have already annulled a number of Service Rules on the ground of contravention of some of the constitutional provisions. For instance, if any rule or order enables the Government to dismiss a Government servant without giving him an opportunity to be heard, such rule would be struck down as unconstitutional owing to contravention of the requirement in Art. 311 (2).⁵

The two matters which are substantively dealt with by our Constitution are—

- (a) Tenure of office of the public servants and disciplinary action against them;
- (b) The constitution and functions of the Public Service Commissions, which are independent bodies to advise the Government on some of the vital matters relating to Services.

Tenure of office. Service at Pleasure.

We have inherited from the British system the maxim that all service is at the pleasure of the Crown, and our Constitution, therefore, primarily declares that anybody who holds a post (civil or military) under the Union or a State holds his office during pleasure of the President or the Governor, as the case may be [Art. 310(1)]. The power to compulsory retire a government servant is one of the facets of the doctrine of pleasure incorporated in this Article.⁶

This means that any Government employee may be dismissed at any time and on any ground, without giving rise to any cause of action for wrongful dismissal, except where the dismissal is in contravention of the constitutional safeguards to be mentioned just now.

Cannot be fettered by Contract.

This right of the Government to dismiss a Government servant at its pleasure cannot be fettered by any contract and any contract made to this effect would be void, for contravention of Art. 310(1) of the Constitution which embodies the principle of service at pleasure. This rule is, however, subject to one exception specified in Art. 310(2) namely, that where Government is obliged to secure the services of technical personnel or specialists, not belonging to the regular Services, by entering into a special contract, without which such persons would not be available for employment under the Government. In such cases, compensation would be payable for premature termination of the service if the contract provides for such payment. But even in such cases, no compensation would be payable under the clause if the service is terminated within the contractual period, on the ground of his misconduct. It will be payable only—

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- (a) if the post is abolished before the expiration of the contractual period; or,
- (b) if the person is required to vacate his post before the expiry of the contractual period, for reasons unconnected with misconduct.

Limitations upon exercise of the Pleasure.

While, however, the pleasure of the Crown in England is absolutely unfettered, the Constitution of India subjects the above pleasure to certain exceptions and limitations:

Exceptions in the case of some high officials.

A. In the case of certain high officials, the Constitution lays down specific procedures as to how their service may be terminated. Thus, as has been noted in their proper places earlier, the Supreme Court Judges, the Auditor-General, the High Court Judges and the Chief Election Commissioner shall not be removed from their offices except in the manner laid down in Arts. 124, 148, 218, 324, respectively. These offices thus constitute exceptions to the general rule of tenure 'during pleasure' of Government servants.

Safeguards for civil servants.

B. Though all other Government servants hold office during the pleasure of the President or the Governor (as the case may be), two procedural safeguards are provided for the security of tenure of 'civil' servants as distinguished from military personnel, namely, that—

(a) A civil servant shall not be dismissed or removed by any authority subordinate to that by which he was appointed. In other words, if he is to be removed from service, he is entitled to the consideration of his appointing authority or any other officer of corresponding rank before he is so removed. The object of this provision [Art. 311(1)] is to save a public servant from the caprices of officers of inferior rank.

(b) The other security which is guaranteed by the Constitution is that no dismissal, removal or reduction in rank shall be ordered against a civil servant unless he has been given a reasonable opportunity of being heard in respect of the charges brought against him.

A. Prior to 1976, this opportunity had to be given at two stages—(a) at the stage of inquiry into the charges; and (b) to make representation against the penalty (such as dismissal, removal, reduction in rank, censure) proposed to be imposed, after the inquiry had been concluded, holding the employee guilty of the charges.

B. But the Constitution (42nd Amendment) Act, 1976, has omitted the right of the employee to make a representation against the penalty proposed, retaining, however, the safeguard that the penalty can be proposed only on the basis of the evidence adduced at the inquiry stage. The

result is that the judicial decisions⁷ prior to 1976, which required that the 'opportunity' under Art. 311(2) must be offered at two stages, have been superseded by the 42nd Amendment.

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Hence, after this amendment of 1976, the expression 'reasonable opportunity' must be interpreted to imply that the Government or other authority proceeding against a civil servant must give him—

- (i) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
- (ii) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence.

Hence, the authority must (i) frame specific charges with full particularity,(ii) intimate those charges to the Government servant concerned, (iii) give him an opportunity to answer those charges; (iv) after considering his answers, take its decision; and (v) the rules of natural justice should be observed in coming to the finding against the accused.

But no 'inquiry' need be held where the employee is given sufficient opportunity to explain his conduct but he does not willfully avail himself of that opportunity⁸ as was done in the case of dismissal of an absconder who failed to respond to show cause why his services be not terminated by way of dismissal as his further retention in service was not desirable.⁹ This would not, however, apply where he fails to attend the inquiry owing to default of the Government in allowing him subsistence allowance.¹⁰

(iii) when the inquiry officer is not the disciplinary authority the delinquent employee has a right to receive a copy of the inquiry officers report before the disciplinary authority arrives at its conclusions. It is a part of the right to defence."

In which cases the opportunity must be given.

The inquiry must be held and the opportunity to be heard must be given if two conditions are satisfied:

- (i) The employee is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State.
- (ii) Such employee is sought to be dismissed, removed or 'reduced in rank'.

While a person "dismissed" is ineligible for re-employment under the Government, no such disqualification attaches to a person 'removed'.¹² But two elements are common to 'dismissal' and 'removal':

(a) Both the penalties are awarded on the ground that the conduct of the Government servant is blameworthy or deficient in some respect.

(b) Both entail penal consequences, such as the forfeiture of the right to salary, allowances or pension already acquired, for past services.

What constitutes Dismissal, Removal and Reduction in Rank.

Where no such penal consequence is involved, it would not constitute 'dismissal' or 'removal', e.g., where a Government servant is 'compulsorily retired',^{5,13} without any further penal consequence attached to such order.¹⁴

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As would appear from the decisions of the Supreme Court,¹⁵ the term actually used in the order terminating the officer's services is not conclusive. Words such as 'discharged' or 'retrenched' may constitute 'dismissal' or 'removal', if the order entails penal consequences, as referred to above. Termination of the services of a temporary employee during the pendency of his criminal trial, for the same assault, was held to be punitive amounting to dismissal.¹⁰

It is also clear that in order to attract Art. 311(2), the termination of services must be against the will of the civil servant. Hence, the following orders of termination of service have been held not to constitute 'dismissal' or 'removal':

(a) Termination in accordance with the terms of the contract of employment.¹⁷

(b) Termination in terms of the conditions of service as embodied in¹⁷⁻¹⁸ the relevant Department Rules applicable to the Government servant, provided such conditions are not inconsistent with the provisions of the Constitution.

(c) Fixing an age for superannuation or compulsory retirement¹⁹, and enforcement thereof.¹⁹

Reduction in rank means the degradation in rank or status of the officer, directed by way of penalty. It thus involves two elements—(a) reduction in the physical sense, meaning degradation; (b) such degradation or demotion must be by way of penalty.

(a) Reduction in rank in the physical sense takes place where the Government servant is reduced to a lower post or to a lower pay-scale. Even reduction to a lower stage in the pay-scale (ordered by way of penalty) would involve a reduction in rank, for the officer loses his rank or seniority in the gradationList of his substantive rank.

(b) As regards the penal nature of the reduction, the Supreme Court has applied the test of 'right to the rank' in question, in the same manner as the 'right to the post' test has been applied in the case of dismissal or removal. Reduction in rank takes place only when a person is reduced from his substantive rank. Hence,

(i) Where a Government servant has a right to a particular rank, the very reduction from that rank will be deemed to be by way of penalty and Art. 311(2) will be attracted, without more. Thus,

An officer who holds a permanent post in a substantive capacity, cannot be transferred to a lower post, without complying with Art. 311(2).

(ii) On the other hand, where a Government servant has no title to a particular rank, under the contract of his employment or conditions of service,—there will ordinarily be no reduction in rank within the meaning of Art. 311 (2),²⁰ e.g., where a person, who had been promoted to a higher post on an officiating basis²¹ or contrary to the statutory recruitment rules²², is reverted to his substantive post as it is neither punitive nor illegal. But even in this case, the order of reversion will amount to 'reduction in rank' so as to

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attract Art. 311(2), if the reversion entails penal consequences, such as postponement of future chances of promotion or the order contains a stigma which indicates that it was penal in nature;²⁰ though, in the absence of such penal features, the motive of the authority would be irrelevant.²³ Reversion of the employees from their confirmed posts by imposing additional qualifications and functions to their confirmed post would offend Art. 311.²⁴

Exceptions to the requirement of giving opportunity.

It is to be noted that even where a person holding a civil post is dismissed, removed or reduced in rank, no inquiry need be held and no opportunity need be given in three classes of cases, which themselves explain the reasons for the exceptions—

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; but such a charge must relate to a misconduct of such magnitude as would have deserved the penalty of dismissal, removal or reduction in rank²⁵

(b) Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry the Supreme Court upheld the concurrent view taken by the disciplinary authority and the appellate authority that holding inquiry into the case of a Head Constable who was working for terrorists and preparing to murder some senior police officers, was not practicable.²⁰; or

(c) Where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry [2nd Proviso to Art. 311 (2)].²⁷ In cases where the mere disclosure of the charge might affect the security of the State, the President or the Governor might exempt the holding of an inquiry²⁸ but such satisfaction should not be mala fide.²⁹ However, the satisfaction need not be personal as such power is exercised in compliance with Art. 166³⁰ but the Govt. is required to disclose the nature of activities of the employee which formed the basis of such satisfaction so that the court/tribunal may be able to

determine whether there was any reasonable nexus between such activities and the security of the State or not³¹ without which the dismissal might be held to be ultra vires.³²

Article 323A of the Constitution and the Administrative Tribunals Act, 1985.

A radical change has taken place in the constitutional law relating to Services by the 42nd Constitution Amendment Act, 1976, which inserted into the Constitution Art. 323A, to take out the adjudication of disputes relating to the recruitment and conditions of service of the public services of the Union and of the States from the hands of the Civil Courts and the High Courts and to place it before an Administrative Tribunal for the Union or of a State (as the case may be).

This provision of the Constitution was to come into effect only if it was implemented by a law made by Parliament. That law has been enacted by Parliament in 1985 and brought into force on October 2, 1985, by setting up a Central Administrative Tribunal (with branches in the specified cities).

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According to this Administrative Tribunal Act, 1985 (as amended in 1986), the Central Administrative Tribunal will adjudicate disputes and complaints with respect to the 'recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union', excepting—

- (a) Members of the Defence Forces.
- (b) Officers and servants of the Supreme Court or of any High Court.
- (c) Members of the secretarial staff of Parliament, or of any Legislature of any State or Union Territory.

Excluding the above categories, any public servant of the Union who is aggrieved, in the matter of his appointment, removal or reduction in rank or the like, shall have to be contented with administrative justice by a Tribunal instead of by a Court of law. The only Court to which the aggrieved person might run, as a last resort, is the Supreme Court, under Arts. 32 and 136.

The decisions of the Administrative Tribunal can, therefore, be challenged only before the Supreme Court and the High Court shall not be competent to interfere under Art. 226 or 227. But subsequently, the position turned out to be otherwise as the Supreme Court declared the Articles 323-A, Cl. 2(d) and 323-B, Cl. 3(d) and also the "exclusion of jurisdiction" clauses in all the legislations enacted in pursuance of these Articles, unconstitutional to the extent they excluded the jurisdiction of the High Courts and the Supreme Court under Arts. 226/227 and 32.³³

Public Service Commissions for the Union and the States.

There shall be a Public Service Commission for the Union; and a Public Service Commission for each State or a Joint Public Service Commission for a group of States if the Parliament provides

for the establishment of such a Joint Public Service Commission in pursuance of a resolution to that effect being passed by the State Legislatures concerned. The Union Public Service Commission also may, with the approval of the President, agree to serve the needs of a State, if so requested by the Governor of that State [Art. 315].

The number³⁴ of members of the Commission and their conditions of service shall be determined (a) by the President in the case of the Union or a Joint Commission, and (b) by the Governor of the State in the case of a State Commission; provided that the conditions of service of a member of a Commission shall not be altered to his disadvantage after his appointment.

Appointment and Term of office of Members.

The appointment of the Chairman and members of the Commission shall be made—(a) in the case of the Union or a Joint Commission, by the President; and (b) in the case of a State Commission, by the Governor of the State. Half of the members of a Commission shall be persons who have held office under the Government of India or of a State for at least ten years [Art. 316].

The term of service of a member of a Commission shall be six years from the date of his entering upon office, or until he attains the age of sixty five years in the case of the Union Commission or of sixty two years³⁵ in the

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case of a State or a Joint Commission. But a member's office may be terminated earlier, in any of the following ways:

- (i) By resignation in writing addressed to—the President in the case of the Union or a Joint Commission, or the Governor in the case of a State Commission.
- (ii) By removal by the President—(a) if the member is adjudged insolvent; or engages himself during his term in paid employment outside the duties of his office; or is in the opinion of the President infirm in mind or body; (b) on the ground of misbehaviour according to the report of the Supreme Court which should hold an enquiry on this matter on a reference being made by the President.

Thus, even in the case of a State Commission, it is only the President who can make a reference to the Supreme Court and make an order of removal in pursuance of the report of the Supreme Court. The Governor has only the power to pass an interim order of suspension pending the final order of the President on receipt of the report of the Supreme Court [Art. 317(1)—(2)].

If a member's term comes to an end while a reference under Art. 317(1) is pending in the Supreme Court the reference³⁶ does not become infructuous and the court must answer it.

A member shall be deemed to be guilty of misbehaviour—(i) if he is in any way concerned or interested in any contract made on behalf of the Government of India or of a State; or (ii) if he

participates in any way in the profit of such contract or agreement or in any benefit there from otherwise than as a member and in common with other members of an incorporated company [Art. 317(4)].

The Constitution seeks to maintain the independence of the Public Service Commission from the Executive in several ways—

Independence of the commission.

- (a) The Chairman or a member of a Commission can be removed from office only in the manner and for the grounds specified in the Constitution (see above).
- (b) The conditions of service of a member of the Public Service Commission shall not be varied to his disadvantage after his appointment [Proviso to Art. 318].
- (c) The expenses of the Commission are charged on the Consolidated Fund of India or of the State (as the case may be) [Art. 322].
- (d) Certain disabilities are imposed upon the Chairman and members of the Commission with respect to future employment under the Government [Art. 319]. Thus, on ceasing to hold office—

- (a) The Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

Prohibition as to the holding of offices by members of Commission on ceasing to be such Members.

- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other

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State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

- (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

In short, the bar against employment under the Government is absolute in the case of the Chairman of the Union Public Service Commission; while in the case of the Chairman of a State Public Service Commission or of the other members of the Union or State Commissions, there is scope of employment in a higher post within the Public Service Commission but not outside.

The Public Service Commissions are advisory bodies⁷ It is open to the government to accept the recommendation or depart from it.³⁸

The following are the duties of the Union and the State Public Service Commissions—

Functions of Public Service Commissions.

- (a) To conduct examination for appointments to the services of the Union and the services of the State respectively.
- (b) To advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of a State may refer to the appropriate Commission [Art. 320].
- (c) To exercise such additional functions as may be provided for by an act of Parliament or of the Legislature of a State—as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution [Art. 321].
- (d) To present annually to the President or the Governor a report as to the work done by the Union or the State Commission, as the case may be [Art. 323].
- (e) It shall be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required [Art. 320(2)].
- (f) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

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The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award [Art. 320(3)].

But—

(i) The President or the Governor, as the case may be, as respects the services and posts in connection with the affairs of the Union or of a State, may specify the matters in which either generally, or in any particular class of cases, or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted. But all such regulations must be laid before the appropriate Legislature and be subject to such modifications as may be made by the Legislature.

(ii) It has been held by the Supreme Court³⁹ that the obligation of the Government to consult the Public Service Commission in any of the matters specified above does not confer any right upon any individual who may be affected by any act of the Government done without consulting the appropriate Commission as required by the Constitution. The reason assigned by the Court is that the consultation prescribed by the Constitution is to afford proper assistance to the Government, in the matter of assessing the guilt of a delinquent officer, the merits of a claim for reimbursement of legal expenses and the like; and that the function of the Commission being purely advisory,³⁷ if the Government fails to consult the Commission with respect to any of the specified matters, the resulting act of the Government is not invalidated by reason of such omission and no individual who is affected by such act can seek redress in a Court of law against the Government for such irregularity or omission.³⁹

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Report of Public Service Commission.

As stated already, it shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respect the cases, if any, where the advice of the Commission was not accepted, the reason for such non-acceptance, to be laid before each House of Parliament [Art. 323(1)]. A State Public Service

Commission has a similar duty to submit an annual report to the Governor and the latter has a duty to lay a copy of such report before the State Legislature with a memorandum explaining the cases, if any, where the advice of the Commission was not accepted by the Government [Art. 323(2)].

How far Commission's advice binding on the Government.

As stated earlier, the function of the Public Service Commission is only advisory and the Constitution has no provision to make it obligatory upon the Government to act upon the advice of the Commission in any case.³⁷ The reason is that, under the Parliamentary system of government, it is the Cabinet which is responsible for the proper administration of the country and its responsibility is to Parliament. They cannot, therefore, abjure this ultimate responsibility by binding themselves by the opinion of any other body of persons. On the other hand, in matters relating to the recruitment to the Services and the like, it would be profitable for the Ministers to take the advice of a body of experts. It is in this light that Sir Samuel Hoare⁴⁰ justified the parallel provisions as to the Public Service Commissions in the Government of India Act, 1935—

"Experience goes to show that they are likely to have more influence if they are advisory than if they have mandatory powers. The danger is that if you give them mandatory powers you then set up two governments."

But, though the Simon Commission⁴¹ was conscious of the fact that left alone, the Ministers might use their position "to promote family or communal interests at the expense of the efficiency or just administration of the services", no safeguard was prescribed in the Government of India Act, 1935 against a flagrant disregard of the recommendations of the Commissions by the Government. In view of the possibility of such abuse, the Constitution has provided the safeguard (referred to above) of the Commission's Report being laid before Parliament (or State Legislature), through the President (or the Governor) as the case may be. The Government is under an obligation, while presenting such Report, to explain the reasons why in any particular case the recommendation of the Commission has been overridden by the Government. In view of this obligation to submit to Parliament an explanation for non-acceptance of the advice of the Commission, the number of such cases may be said to have been kept at a minimum.

Notwithstanding the above safeguard, there is criticism from certain quarters that patronage is still exercised by the Government by resorting to some devices—

- (a) One of these is the system of making ad hoc appointments for a temporary period without consulting the Public Service Commission, and

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then approaching the Commission to approve of the appointment at a time when the person appointed has already been in service for some time and the recommendations of his superiors are available to him, in addition to the experience already gained by him in the work, which puts him at an advantage over the new candidates. The Supreme Court has been deprecating this

practice of making ad hoc appointments. The Supreme Court did not allow the services of the employees appointed de hors the rules, although officiating for a long period of 14 years;⁴² that of the ad hoc appointees by bypassing the process of recruitment through open competition⁴³ and a temporary appointee on monthly basis during the period of strike,⁴⁴ to be regularised.

(b) Sometimes the rules laying down the qualifications for the office to which such appointment has been made is changed retrospectively to fit in the appointee.

(c) Another complaint is that sometimes the Reports are presented before Parliament (or State Legislature as the case may be) long after the year under review. This, however, does not appear to be permissible under the Constitution. So far as the duty of the Commission to report to the President or the Governor is concerned, the Constitution says that it must be done 'annually'. Hence, his obligation cannot be postponed for more than a few months from the end of the period under Report. The duty of the President or the Governor is to present the Report to Parliament or the State Legislature "on receipt of such Report". Though no specific time-limit is imposed, it is clear that it must be done as soon as possible after the receipt of the annual Report and it cannot be construed that the obligation is discharged by presenting the Report two or three years after the receipt or by presenting the Reports for two or three years in a lump. The presentation before the Legislature must also be an annual affair, and, if the President or the Governor makes delay, it should be the concern of the appropriate Legislature to demand an explanation for such delayed presentation, apart from anything else. If the Legislature slumbers, the entire machinery of Parliamentary government will succumb, not to speak of any particular object of scrutiny by the Legislature.

All-India Services.

Another matter relating to the Services which is dealt with by the Constitution is the creation of All-India Services. The All-India Services should be distinguished from Central Services. The Central Services is an expression which refers to certain Services under the Union, maintained on an all-India basis, for service throughout the country—for instance, the Indian Foreign Service, the Indian Audit and Accounts Service, the Indian Customs and Excise Service and the like. The expression "All-India Service", on the other hand, is a technical one, used by the Constitution to indicate only the Indian Administrative Service and the Indian Police Service and such other Services⁴⁵ which may be included in this category in the manner provided by Art. 312 of the Constitution. That Article provides that if the Council of States declares by a resolution, supported by not less than two-thirds of the members present and voting, that it is necessary and expedient in the national interest to create an All-India Service, common to the Union and the States, Parliament may provide for its creation by making a law. The practical incident of an

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All-India Service thus is that the recruitment to it and the conditions of service under it can be regulated only by an Act of the Parliament. It must be noted that it is by virtue of this power that Parliament has made the All-India Services Act, 1951 and that the conditions of service, recruitment, conduct, discipline and appeal of the members of the All-India Services are now

regulated by Rules made under this Act. Since these Rules provide that the officers of the All-India Services shall be appointed and controlled by the Union Government, these Services constitute an additional agency of control of the Union over the State, insofar as members of these Services are posted in key posts in the States.

Fundamental Rights of Civil Servants.

I. Subject to the power of Parliament, under Art. 33, to modify the fundamental rights in their application to members of the Armed Forces and the Police Forces, the fundamental rights guaranteed by the Constitution are in favour of all 'citizens', which obviously include public servants.⁴⁶

II. It follows, therefore, that a civil employee of the Government is entitled to the protection of a fundamental right such as Arts. 14,⁴⁷ 15,⁴⁸ 16,⁴⁹ 19,⁴⁶ 20 in the same manner as a private citizen. Thus—

If two sets of rules relating to disciplinary proceedings were in operation at the time when the inquiry was directed against a Government servant, and the inquiry was directed under the set of Rules which was more drastic and prejudicial to the interests of such Government servant, the proceedings against him are liable to be struck off as infringing Art. 14. In other words, if against two public servants similarly circumstanced enquiries may be directed according to procedure substantially different,⁴⁷ at the discretion of the Executive authority, exercise whereof is not governed by any principles having any rational relation to the purpose to be achieved by the inquiry, the order selecting a prejudicial procedure, out of the two open for selection, is hit by Art. 14.⁴⁷

III. Restrictions upon the rights of the public servants under Art. 19 can, therefore, be imposed only on the grounds specified in Cls. (2)-(6), and to the extent that the restriction is reasonable.⁴⁶

But while a public servant possesses the fundamental rights as a citizen, the State also possesses, under the Proviso to Art. 309, the power to regulate their 'conditions of service'. Now, the interests of service under the State require efficiency, honesty, impartiality and discipline and like qualities on the part of the public servant. The State has thus the constitutional power to ensure that every public servant possesses these qualities and to prevent any person who lacks these qualities from being in the public service. It seems, therefore, that State regulation of the conditions of service of public servants so as to restrict their fundamental rights will be valid only to the extent that such restriction is reasonably necessary in the interests of efficiency, integrity, impartiality, discipline, responsibility and the like which have a 'direct, proximate and rational' relation to the conditions of public service as well as the general grounds (e.g., public order, under Art. 19) upon which the fundamental rights of all citizens may be restricted.⁴⁶

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33. L Chandra Kumar v. Union of India, (1997) 3 S.C.C. 261 : A.I.R. 1997 S.C. 1125.
34. At the end of 2000, the number of members of the Union Public Service Commission was 10, excluding the Chairman.
35. Raised from 60 to 62 years by the Constitution (41st Amendment) Act, 1976.
36. In re. ref. under Art. 317(7), (1990) 4 S.C.C. 262.
37. D'Silva v. Union of India, A. 1962 S.C. 1130.
38. Mukherjee v. Union of India, (1994) Supp. (1) S.C.C. 250.
39. State of UP. v. Srivastava, A. 1957 S.C. 912; Ram Gopal v. State of M.P., A. 1970 S.C. 158.
40. 300 Parl. Deb., c. 858.
41. Simon Commission Rep., Vol. I.
42. E. Ramakrishnan v. State of Kerala, (1996) 10 S.C.C. 565.

43. P. Ravindran v. Union Territory of Pondicherry, (1997) 1 S.C.C. 350.

44. Union of India v. Harish Balkrishna Mahajan, (1997) 3 S.C.C. 194.

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45. Several new Services have been added to the List of All-India Services, namely, the Indian Engineering Service, the Indian Forest Service and the Indian Medical Service [the All-India Service (Amendment) Act, 1963]; the Indian Statistical Service; Indian Economic Service.

The Supreme Court has directed the Government of India to take steps for setting up an All-India Judicial Service [All India Judges' Assn v. Union of India, A. 1992 S.C. 165 (para 10A)]. No such Service appears to have been created by December, 1996.

46. Kameshwar v. State of Bihar, A. 1962 S.C. 1160; Ghosh v. Joseph, A. 1963 S.C. 812.

47. State of Orissa v. Dhirendranath, A. 1961 S.C. 1715; Jagannath v. State of U.P., A. 1961 S.C. 1245.

48. State of Punjab v. Joginder, A. 1963 S.C. 913.

49. Devadasan v. Union of India, A. 1964 S.C. 179.

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CHAPTER 31 ELECTIONS

Elections.

WHILE the Constitution lays down the procedure for the election of the President¹ [Art. 54] and the Vice-President¹ [Art. 66], the procedure for election to the Legislatures of the Union and the States is left to legislation, the Constitution itself providing certain principles. These principles are—

(a) There is no provision for communal, separate or special representation. There shall be one electoral roll for every territorial constituency for election to either House of Parliament or to the State Legislature and no person shall be excluded from such roll on grounds only of religion, race, caste, sex or any of them [Art. 325].

(b) The election shall be on the basis of adult suffrage, i.e., every person who is a citizen of India and who is not less than 18 years of age shall be entitled to vote at the election provided he is not disqualified by any provision of the Constitution or of any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime, or corrupt or illegal practice [Art. 326].

Power of Legislature.

Subject to the above principles and the other provisions of the Constitution, the power to make laws relating to all matters in connection with the election not only to the Houses of Parliament, but also to the Houses of the Legislature of a State belongs to the Union Parliament [Art. 327; Entry 72, List I, 7th Sch.]. The State Legislature has, however, a subsidiary power in this respect. It can legislate on all electoral matters relating to the State Legislature insofar as such matters are not covered by legislation by Parliament. The laws of the State Legislature shall, in other words, be valid only if they are not repugnant to laws made by Parliament and, of course, to the provisions of the Constitution [Art. 328], Parliament has enacted the Representation of the People Acts, 1950, 1951, as well as the Delimitation Commission Acts, 1962, 1972, to, prescribe the mode of election, and the formation and delimitation of the constituencies relating to election.

Single-member Territorial Constituencies.

The procedure prescribed by these Acts is voting based on single- member territorial constituencies. While proportional representation has been prescribed for election to the office of the President and the Vice-President, that system has not been adopted for election to the Legislature of the Union and the States.

Disputes are bound to arise in the matter of such a big-scale election on various points, such as, whether the procedure for election was properly

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Decision of disputes relating to Election of Members.

followed or whether any candidate returned as member suffered from any disqualification under the law or the Constitution, or whether a candidate who ought to have been returned has been, in fact, declared not elected. For the decision of such disputes, the Constitution provides [Art. 329] that the ordinary courts of the land will have no jurisdiction and that any question relating to an election can be agitated only by an election petition, as provided for by law.

Article 329 provides—

"Notwithstanding anything in this Constitution—

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

Under the Representation of the People Act, as it stood at the end of 1996, the power to decide an election petition is vested in the High Court, with appeal to the Supreme Court.

The 42nd Amendment—setting up Election Tribunals.

By Art. 323B of the Constitution, as inserted by the Constitution [42nd Amendment) Act, 1976, power has been conferred on the appropriate Legislature to set up a Tribunal for the adjudication of disputes relating to elections of the Legislature concerned, by making law, and to provide in such law for the exclusion of all Courts (save that of the Supreme Court under Art. 136), to entertain any such matter. In short, when any such law is made in exercise of this power, the High Court will cease to have any jurisdiction over election disputes; they will be determined only by the Administrative Tribunal set up by law, with appeal from the decision of such Tribunal to the Supreme Court by special leave under Art. 136. No such law, ousting the jurisdiction of the High Court by an administrative Tribunal, implementing Art. 323B, has, however, been passed till April, 1995.

Special Jurisdiction for Election Disputes re. President, Vice- President, Prime Minister, Speaker.

In Art. 71 of the Constitution, the exclusive forum for adjudicating disputes relating to the election of the President and Vice-President is the Supreme Court. There is no special provision for the Prime Minister or the Speaker of the House of the People, so that any dispute relating to election to these offices is to be determined only by an election petition before the High Court, according to Art. 329(b).

Election Commission.

In order to supervise the entire procedure and machinery for election and for some other ancillary matters, the Constitution provides for an independent body, namely, the Election Commission [Art. 324]. The provisions for the removal of the Election Commissioners make them independent of executive control and ensure an election free from the control of the party in power for the time being.

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The Election Commission shall consist of a Chief Election Commissioner and such other Commissioners as the President may, from time to time, fix [Art. 324(2)].

From the beginning the Election Commission consisted of the Chief Election Commissioner only. The Congress(I) Government just a week before the commencement of the 9th General Election appointed two more Commissioners on 16th October, 1989 making it a multi-member Commission (According to critics, the haste with which new Members were appointed created a suspicion that it was an attempt to compromise the independence of the Commission). The National Front Government, on assuming charge, amended the rules to make it again a single-member body w.e.f. 2nd January, 1990. The conditions of service and tenure of office of the Election Commissioner shall be such as Parliament may by law prescribe: Provided that the Chief Election Commissioner cannot be removed from his office except in like manner and on like grounds as a Judge of the Supreme Court. In other words, the Chief Election Commissioner can only be removed by each House of Parliament, by a special majority and on the ground of

proved misbehaviour or incapacity (and the other Election Commissioners shall not be removed by the President except on the recommendation of the Chief Election Commissioner).

The Election Commission shall have the power of superintendence, direction and conduct of all elections to Parliament and the State Legislatures and of elections to the offices of the President and Vice-President [Art. 324(1)].

Regional Commissioners may also be appointed by the President, in consultation with the Election Commission, on the eve of a general election to the House of the People or to the State Legislature, for assisting the Election Commission [Art. 324(4)].

On 1-10-1993 the Government promulgated an Ordinance³ (which was subsequently converted into an Act) to provide for the appointment of two Election Commissioners. Soon thereafter two Commissioners were appointed. The distribution of work and the rules for transaction of business made in the Ordinance were challenged in the Supreme Court. The Court issued directions and the matter has been finally settled by upholding the validity of the Act.⁴

REFERENCES

1. See Chap. 11, ante.
2. The voting age has been lowered from 21 to 18, by the Constitution (61st Amendment) Act, 1989. Corresponding change has been effected by amending the Constitution of Jammu & Kashmir, by the 21st Amendment, 1989 to that State's Constitution.
3. The Ordinance has been replaced by Chief Election Commissioner and other Election Commissioners (Condition of Service) Amendment Act, 1993 with effect from 4th January 1994.
4. T.N. Seshan v. Union of India, (1995) 4 S.C.C. 611.

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CHAPTER 32 MINORITIES, SCHEDULED CASTES AND SCHEDULED TRIBES

IT was pointed out at the outset that our Constitution, being consecrated by the ideals of equality and justice both in the social and political fields, abolishes any discrimination either against or in favour of any class of persons on the grounds of religion, race or place of birth. It is in pursuance of this ideal that the Constitution did away with communal representation or reservation of seats in the Legislature or in the offices on the basis of religion.

It would have been a blunder on the part of the makers of our Constitution if, on a logical application of the above principle, they had omitted to make any special provisions for the

advancement of those sections of the community who are socially and economically backward, for, the democratic march of a nation would be impossible if those who are handicapped are not aided at the start. The principle of democratic equality (as envisaged in the Preamble to the Constitution), indeed, can work only if the nation as a whole is brought on the same level, as far as that is practicable. Our Constitution, therefore, prescribes certain temporary measures to help the backward sections to come up to the same level with the rest of the nation, as well as certain permanent safeguards for the protection of the cultural, linguistic and similar rights of any section of the community who might be said to constitute a 'minority' from the numerical, not communal, point of view, in order to prevent the democratic machine from being used as an engine of oppression by the numerical majority.

Provisions for Protection of Minorities.

Any discussion of the provisions of our Constitution for the protection of me interests of the minorities can hardly fail to take notice of the palpably unfair comments of Sir Ivor Jennings' on this point:

"Indeed, the most complete disregard of minority claims is one of the most remarkable features of Indian federalism. The existence of competing claims on religious and ethnic grounds was one of the reasons given for the refusal of Indian independence before 1940. By reaction the Congress politicians, who were above all nationalists, tended to minimize the importance of minority interests and emotions."

It is obvious that Sir Ivor would have been satisfied if the framers of our Constitution had perpetuated communal representation even after the country had been partitioned on the basis of a two-Nation slogan carried to the point of fanaticism, leading to a well-planned mass massacre. It is somewhat painful to point out to an Englishman that communal representation

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was not a natural limb of the Indian political system which was 'blindly' amputated by the nationalist Congress leaders but was an artificial growth which had been grafted upon our body politic by the Morley-Minto plan in the name of 'reform'.² An impartial student of Indian history may be expected to testify how, once the malignant growth had been implanted into our political life, every opportunity was seized by the imperialistic power to develop it as a wedge to separate the Indian people into two hostile camps so much so that it could eventually be advanced "as one of the reasons for the refusal of Indian independence". After those who were allured by the separatist vision had succeeded in dividing the motherland to create an exclusive home of their own, it must be presumed that those belonging to that very community who elected to remain in their birth-place should prefer to live with the other children of the soil as one family, after giving up all claims to separate treatment in the political sphere. It is only there that the objective of 'fraternity' assured by the Preamble would be fulfilled and the "integrity of the Nation" (*ibid*) could be achieved.

That the majority community has not abolished the communal representation with any selfish motives will be apparent from the very fact that notwithstanding the abolition of reservation,

members of the minority community have been appointed to the highest offices of President, Vice-President, ministers, ambassadors, governors and judges of the superior courts in such numbers as can hardly be overlooked by an impartial observer. There is no reasonable ground for apprehending that the interests or development of the minority community have suffered because of the abolition of separate electorates on a communal basis.

The real injustice done by Sir Ivor, above all, is the omission to mention the religious, cultural and educational safeguards incorporated in the Constitution to protect the interests of all minority groups, whether they are religious, linguistic or cultural minorities. While some of these shall be a permanent feature of the Constitution, there are others of a temporary nature which will continue to operate only so long as the backward communities are lagging behind in the march of the nation. The safeguards for minorities and backward classes may, accordingly, be discussed under two heads—

I. PERMANENT PROVISIONS

Religious Freedom.

(i) Though the provisions, guaranteeing religious freedom to every individual cannot, strictly speaking, be said to be specific safeguards in favour of the minorities, they do protect the religious minorities if we contrast the provisions of the successive Islamic Constitutions of Pakistan. Our Constitution does not contain any provision for the furtherance of any particular religion as may raise legitimate apprehensions in the minds of those who do not belong to that religion.

Linguistic and Cultural Rights guaranteed.

(ii) Any section of the citizens of India having a distinct language, script or culture of its own shall have the fundamental right to conserve the same [Art. 29(1)]. This means that if there is a cultural minority which wants to preserve its own language and culture, the State would not by law

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impose upon it any other culture belonging to the majority of the locality. This provision, thus, gives protection not only to religious minorities but also to linguistic minorities. The promotion of Hindi as the national language or the introduction of compulsory primary education cannot be used as a device to take away the linguistic safeguard of a minority community as guaranteed by Arts. 29-30.³⁴ In fact, both the Union and State Governments have been taking active steps, at Government expense, for the promotion of Urdu in order to appease Muslim sentiments (see next Chapter).

Facilities for Instruction in Mother-tongue.

(iii) The Constitution directs every State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority

groups and empowers the President to issue proper direction to any State in this behalf [Art. 350A].

Special Officer for Linguistic Minorities.

(iv) A Special Officer for linguistic minorities shall be appointed by the President to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President [Art. 350B].

Apart from this, Parliament has enacted the National Commission for Minorities Act, 1992 for monitoring the working of the safeguards provided in the Constitution and in Union and State laws.⁵

No discrimination in State Educational Institutions.

(v) No citizen shall be denied admission into any educational institution maintained by the State or receiving State aid, on grounds only of religion, race, caste, language or any of them [Art. 29(2)]. This means that there shall be no discrimination against any citizen on the ground of religion, race, caste or language, in the matter of admission into educational institutions maintained or aided by the State. It is a very wide provision intended for the protection not only of the religious minorities but also of 'local' or linguistic minorities, and the provision is attracted as soon as the discrimination is immediately based only on the ground of religion, race, caste, language or any of them.

The Government of Bombay issued an Order which directed that, subject to certain exceptions, no primary or secondary school receiving aid from Government should admit to a class where English was the medium of instruction, any pupil other than a pupil belonging to a section of the citizens the language of which was English, namely Anglo-Indians and citizens of non-Asiatic descent. An Indian citizen, other than an Anglo-Indian citizen, was denied admission to a State-aided school, in pursuance of the above Order. The Supreme Court held that the immediate ground for denial of admission of a pupil to such a School where English was the medium of instruction was that the mother-tongue of the pupil was not English. It was, thus, a denial of the right conferred by Art. 29(2), only on the ground of the language of the pupil. The argument that the object of the denial was to promote the introduction of Hindi or any other Indian language as the medium of instruction in the Schools was immaterial in determining whether Art. 29(2) had been contravened.⁴

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Right to establish Educational Institutions of their choice.

(vi) All minorities, whether based on religion or language, shall have the fundamental right to establish and administer educational institutions of their choice [Art. 30(1)]. While Art. 29(1) enables the minority to maintain its language or script, the present clause enables them to run their own educational institution, so that the State cannot compel them to attend any other institutions, not to their liking.

By the 1978 amendment, favourable treatment has been accorded to such minority educational institutions in the matter of compensation for compulsory acquisition of property by the State. While, by reason of the repeal of Art. 31, all persons have lost their constitutional right to compensation for acquisition of their property by the State, including educational institutions belonging to the majority community, educational institutions established by a minority community lie entrenched in this behalf. Their property cannot be acquired by the State without payment of such compensation as would safeguard their right to exist, as is guaranteed by Art. 30(1A).

No Discrimination in State aid to Educational Institutions.

(vii) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language [Art. 30(2)].

The ambit of the above educational safeguards of all minority communities, whether religious, linguistic, or otherwise, can be understood only if we notice the propositions evolved by the Supreme Court out of the above guarantees:

(a) Every minority community has the right not only to establish its own educational institutions, but also to impart instruction to the children of its own community in its own language.⁴

(b) Even though Hindi is the national language of India and Art. 351 provides a special directive upon the State to promote the spread of Hindi, nevertheless, the object cannot be achieved by any means which contravenes the rights guaranteed by Art. 29 or 30.⁴

(c) In making primary education compulsory [Art. 45], the State cannot compel that such education must take place only in the schools owned, aided or recognised by the State so as to defeat the guarantee that a person belonging to a linguistic minority has the right to attend institutions run by the community, to the exclusion of any other school.³

(d) Even though there is no constitutional right to receive State aid, if the State does in fact grant aid to educational institutions, it cannot impose such conditions upon the right to receive such aid as would, virtually, drive the members of a religious or linguistic community of their right under Art. 30(1). While the State has the right to impose reasonable conditions, it cannot impose such conditions as will substantially deprive the minority community of its rights guaranteed by Art. 30(1). Surrender of fundamental rights cannot be exacted as the price of aid doled out by the State. Thus, the State cannot prescribe that if an institution, including one entitled to the

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protection of Art. 30(1), seeks to receive State aid, it must subject itself to the condition that the State may take over the management of the institution or to acquire it on its subjective satisfaction as of certain matters,—for such condition would completely destroy the right of the community to administer the institution.³

(e) Similarly, in the matter of the right to establish an institution in relation to recognition by the State, though there is no constitutional or other right for an institution to receive State recognition and though the State is entitled to impose reasonable conditions for receiving State recognition, e.g., as to qualifications, it cannot impose conditions the acceptance of which would virtually deprive a minority community of their right guaranteed by Art. 30(l).3

Where, therefore, the State regulations debar scholars of unrecognised educational institutions from receiving higher education or from entering into the public services, the right to establish an institution under Art. 30(1) cannot be effectively exercised without obtaining State recognition. In such circumstances, the State cannot impose it as a condition precedent to State recognition that the institution must not receive any fees for tuition in the primary classes. For, if there is no provision in the State law or regulation as to how this financial loss is to be recouped, institutions, solely or primarily dependent upon the fees charged in the primary classes, cannot exist at all.3

(f) Minority institutions protected under Art. 30(1) are, however, subject to regulation by the educational authorities of the State to prevent mal-administration and to ensure a proper standard of education/ But such regulation cannot go to the extent of virtually annihilating the right guaranteed by Art. 30(l).6

No discrimination in Public Employment.

(viii) No person can be discriminated against in the matter of public employment, on the ground of race, religion or caste [Art. 16(2)].

Provisions for upliftment of the Scheduled Castes and Tribes, and other Backward Classes.

(ix) While the Constitution has abolished representation on communal lines, it has included safeguards for the advancement of the backward classes amongst the residents of India (irrespective of their religious affiliations), so that the country may be ensured of an all-round development. These provisions fulfil the assurance of "justice, social, economic and political" which has been held out by the very Preamble of the Constitution. A major section of such backward classes has been specified in the Constitution as Scheduled Castes and Scheduled Tribes because their backwardness is patent.

Scheduled Castes and Tribes.

There is no definition of Scheduled Castes and Scheduled Tribes in the Constitution itself. But the President is empowered to draw up a list in consultation with the Governor of each State, subject to revision by Parliament [Arts. 341-342]. The President has made Orders, specifying the Scheduled Castes and Scheduled Tribes in the different States in India, which have since been amended by Acts of Parliament.7

A. Special Provisions for Scheduled Castes and Tribes.

The Constitution makes various special provisions for the protection of the interests of the Scheduled Castes and Scheduled Tribes. Thus,

- (i) Measures for the advancement of the Scheduled Castes and Scheduled Tribes are exempted [Art. 15(4)] from the general ban against discrimination on the grounds of race, caste, and the like, contained in Art. 15. It means that if special provisions are made by the State in favour of the members of these Castes and Tribes, other citizens shall not be entitled to impeach the validity of such provisions on the ground that such provisions are discriminatory against them.
- (ii) On the other hand, while the rights of free movement and residence throughout the territory of India and of acquisition and disposition of property are guaranteed to every citizen, in the case of members of the Scheduled Castes and Scheduled Tribes, special restrictions may be imposed by the State as may be required for the protection of their interests. For instance, to prevent the alienation or fragmentation of their property, the State may provide that they shall not be entitled to alienate their property except with the concurrence of a specified administrative authority or except under specified conditions [Art. 19(5)].
- (iii) The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of the efficiency of the administration, in the making of appointments⁸ to services and posts in connection with the affairs of the Union or of a State [Art. 335].
- (iv) There shall be a National Commission for the Scheduled Castes and Scheduled Tribes to be appointed by the President [Art. 338].⁹ It shall be the duty of this Commission to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and to report to the President upon the working of those safeguards annually or at such intervals as it may deem fit, and the President shall cause all such reports to be laid before each House of Parliament.
- (v) The President may, at any time, and shall, at the expiration of ten years from the commencement of this Constitution, by Order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States. The Order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable [Art. 339(1)].
- (vi) The executive power of the Union shall extend to the giving of directions to any such State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State [Art. 339(2)].

With a view to associate members of Parliament and other members of the public in the due discharge of the above functions by the Government of India, three Parliamentary Committees have been set up. Their function is to formulate and review the working of schemes for the welfare of the

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Scheduled Castes and Scheduled Tribes and to advise the Government of India on matters relating to these castes and tribes.

(vii) Financial aid for the implementation of these welfare schemes is provided for in Art. 275(1) which requires the Union to give grants-in-aid to the States for meeting the costs of schemes of welfare of the Scheduled Tribes and for raising the level of administration of the Scheduled Areas in a State to that of the administration of the areas of that State.

(viii) Proviso to Art. 164 lays down that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare, who may also be in charge of the welfare of the Scheduled Castes and other backward classes.

In practice, such Welfare Departments have been set up not only in these three States as required by the Constitution, but also in other States.

(ix) Special provisions are laid down in the Fifth and Sixth Schedules of the Constitution, read with Art. 244, for the administration of areas inhabited by Scheduled tribes.

Over and above all these, there is a general Directive in Art. 46 that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Besides, there are temporary provisions for special representation of and reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislatures [Arts. 330, 332, 334]10-11 which will be treated separately, hereafter.

By amending Art. 338 the Constitution (65th Amendment) Act, 1990, a National Commission has been set up for investigating and reporting on the working of the foregoing safeguards regarding the Scheduled Castes and Scheduled Tribes.⁹

B. For Backward Classes, Generally.

Not contented with making special provisions for the Scheduled Castes, who form a specific category of socially depressed people (generally identifiable with the Gandhian term 'harijari'), the Constitution has made separate provisions for the amelioration and advancement of all 'backward classes', in general.

Of course, the Constitution does not define 'backward classes'. The Scheduled Castes and Scheduled Tribes are no doubt backward classes, but the fact that the Scheduled Castes and Scheduled Tribes are mentioned together with the expression 'backward classes' in the foregoing provisions shows that there may be other backward classes of people besides the Scheduled Castes and Scheduled Tribes. The Constitution provides for the appointment of a 'Commission to

investigate the conditions of backward classes' [Art. 340]. Such a Commission was appointed in 1953 (with Kaka Saheb Kalelkar as Chairman), with the following terms of appointment—

(a) To determine the tests by which any particular class or group of people can be called 'backward'.

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(b) To prepare a list of such backward communities for the whole of India.

(c) To examine the difficulties of backward classes and to recommend steps to be taken for their amelioration.

This Commission submitted its report to the Government in 1955, but the tests recommended by the Commission appeared to the Government to be too vague and wide to be of much practical value; hence, the State Governments have been authorised to give assistance to the backward classes according to the lists prepared by the State Governments themselves.

The second Backward Classes Commissioner, Mr. B.P. Mandal, submitted his report in 1980. In August 1990, the Government declared reservation of 27% seats in government service on the basis of this report. This was challenged as unconstitutional. A ninejudge Bench has decided this case in November, 1992, rejecting that challenge.¹² (For the mainpoints in the judgment, see Chap. 8 under ."Mandal Commission case".)

The Court has not itself enumerated the 'backward classes' but has directed the Government to set up a Commission¹³ to specify the backward classes, in the light of the principles laid down by the Court."

Following the recommendations of the Commission the Central Government has reserved 27% seats in all recruitments to be made from 9th September, 1993.

In has already been pointed out that the Proviso to Art. 164(1) provides for a Minister in charge of the welfare of backward classes and that departments for such welfare have, in fact, been opened in all the States.

Special provisions for the Anglo-Indian Community.

Even apart from the foregoing safeguards, provisions were made in the Constitution in the interests of the Anglo-Indian community, in view of their peculiar position in Indian society [see below).

An Anglo-Indian is defined in Art. 366(2) as—

"a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within

such territory of parents habitually resident therein and not established there for temporary purposes only."

The Special Officer for Scheduled Castes and Scheduled Tribes was to investigate into and report on the working of the foregoing safeguards relating to the Anglo-Indian community [Art. 338(3)]. This provision has been repealed by the 65th Amendment Act, 1990.

II. TEMPORARY PROVISIONS

Let us now advert to other provisions for the advancement of the Scheduled Castes and Scheduled Tribes as well as the Anglo-Indian community, which were intended to be of a temporary duration,—just sufficient to enable them to come up to the level of the general body of citizens:

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(a) Seats shall be reserved in the House of the People¹⁰ for—(a) The Scheduled Castes; (b) The Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and (c) The Scheduled Tribes in the autonomous districts of Assam [Art. 330].

Seats shall also be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly¹⁰ of every State [Art 332]. Such reservation will cease on the expiration of fifty years¹¹ from the commencement of the Constitution, i.e., in January, 2000 A. D. [Art. 334].

(b) The President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People [Art. 331]. The Governor has a similar power in respect of the Legislative Assembly of the State, but in the case of a Governor, the maximum quota, fixed by the Constitution (23rd Amendment) Act, 1969 is—one member of the community for the Legislative Assembly [Art. 333]. Such power shall cease after sixty years¹¹ from the commencement of the Constitution.

(c) The provisions for reservation for Anglo-Indians in certain services of the Union [Art. 336] or for special educational grants [Art. 337] have already expired.

REFERENCES

1. Some Characteristics of the Indian Constitution, 1953, p. 64.
2. Thanks are due to Prof. Gledhill that he does not fail to notice this [(1959) Journal of Indian Law Institute, p. 406].
3. Re: Kerala Education Bill, A. 1958 S.C. 956
4. State of Bombay v. Bombay Education Society, (1955) 1 S.C.R. 568.

5. For text of this Act, see pp. 1857ff., App. III of the 13th Ed. of Author's Shorter Constitution of India.

6. State of Kerala v. Mother Provincial, A. 1970 S.C. 2079; St. Xavier's College v. State of Gujarat, A. 1974 S.C. 1389; Sidhrajbhai v. State of Gujarat, A. 1963 S.C. 540.

7. Scheduled Castes and Scheduled Tribes form 24.56 per cent of the total population of the country (India 2001, p. 14).

8. Balaji v. State of Mysore, A. 1963 S.C. 649 (656, 658).

9. For the text of new Art. 338, see Author's Constitutional Law of India, 6th Ed., p. 390.

10. In 1999, out of 545 seats in the House of the People, 81 were reserved for representatives of the Scheduled Castes and 49 for representatives of the Scheduled Tribes. Two President's nominees from Anglo-Indian in the Legislative Assemblies, [present position is not available] on the other hand, out of an aggregate of 3,991 seats, 548 were reserved for the Scheduled Castes and 527 for the Scheduled Tribes.

11. The period of ten years prescribed in the original Constitution was extended to twenty years by the Constitution (8th Amendment) Act, 1959, and, then, to thirty years, by the Constitution (23rd Amendment) Act, 1969, on the ground that the object of the safeguard had not yet been fulfilled. This has been further extended to forty years, by the Constitution (45th Amendment) Act, 1980, to fifty years by the Constitution (62nd Amendment) Act, 1989, w.e.f. 20-12-1989 and to sixty years by the Constitution (79th Amendment) Act, 1999, w.e.f. 25-1-2000 [Art. 334] and to sixty years by the Constitution (79th Amendment) Act, 1999 (w.e.f. 25-1-2000).

12. Indra Sawhney v. Union of India, (1992) Supp. (3) S.C.C. 217.

13. Parliament has already enacted the National Commission for Backward Classes Act, 1993, for this purpose. For text see App. V of the Author's Shorter Constitution of India, p. 1869, App. V, 13th Ed. This came into force on 1st February, 1993. In August, 1993, a 5-member Commission has been constituted. Justice R.N. PRASAD is its chairman.

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CHAPTER 33 LANGUAGES

Languages.

LANGUAGES offered a special problem to the makers of the Constitution simply because of the plurality of languages used by the vast population (over 84 crores, according to the 1991 census). It is somewhat bewildering to think that no less than 1,652 spoken languages, including 63 non-Indian languages, are current in this sub-Continent.

Need for an Official Language.

The makers of the Constitution had, therefore, to select some of these languages as the recognised medium of official communication in order to save the country from a hopeless confusion. Fortunately for them the number of people speaking each of these 1,652 languages was not anything like proportionate and some 181 languages (included in the 8th Schedule of the Constitution, see Table XX) could easily be picked up as the major languages of India, used by 91 per cent of the total population of the country, and out of them, Hindi, including its kindred variants Urdu and Hindustani, could claim 46 per cent. Hindi was accordingly prescribed as the official language of the Union (subject to the continuance of English for the same purpose for the limited period of 15 years), and, for the development of the Hindi language as a medium of expression for all the elements of the composite culture of India, the assimilation of the expressions used in the other languages specified in the Eighth Schedule was recommended [Art. 351],

But though one language was thus prescribed for the official purposes of the Union, and the makers of the Constitution sought to afford relief to regional linguistic groups by allowing the respective State Legislatures [Art. 345] and the President [Art. 347] to recognise some language or languages other than Hindi as the languages for intra-State official transactions or any of them. These provisions thus recognise the right of the majority of the State Legislature or a substantial section of the population of a State to have the language spoken by them to be recognised for official purposes within the State.

In the result, the provisions of the Constitution relating to Official Language have come to be somewhat complicated [Arts. 343-351].

Official Language.

The Official language of the Union shall be Hindi in Devanagri script [Art. 343]. But, for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union

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A. Of the Union.

for which it was being used immediately before such commencement. Even after the expiry of the above period of 15 years, Parliament may by law provide for the use of—

- (a) The English language, or
- (b) The Devanagri form of numerals, for such purposes as may be specified in the law [Art. 343].

In short, English would continue to be the official language of the Union side by side with Hindi, until 1965, and thereafter the use of English for any purpose will depend on Parliamentary legislation. Parliament has made this law by enacting the Official Languages Act, 1963, which will be presently noted.

Official Language Commission.

The Constitution provides for the appointment of a Commission as well as a Committee of Parliament to advise the President as to certain matters relating to the official language [Art. 344]. The Official Language Commission is to be appointed at the expiration of 5 years, and again at the expiration of 10 years, from the commencement of the Constitution. The President shall constitute the Commission with the representatives of the recognised languages specified in the Eighth Schedule.¹ It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the progressive use of the Hindi language for the official purposes of the Union;
- (b) restrictions on the use of the English language for any of the official purposes of the Union;
- (c) the language to be used for proceedings in the Supreme Court and the High Courts and the texts of legislative enactments of the Union and the States as well as subordinate legislation made there under;
- (d) the form of numerals to be used for any of the official purposes of the Union;
- (e) any other matters referred to the Commission by the President as regards—
 - (1) the official language of the Union, and
 - (2) the language for communication between the Union and the States or between one State and another.

In making its recommendations, the Commission shall have due regard to the industrial, cultural and scientific advancement of India and the just claims and interests of persons belonging to the non-Hindi speaking areas in regard to Public Services.

The recommendations of the Commission will be examined by a Joint Parliamentary Committee consisting of thirty members of whom twenty shall be elected from the Lok Sabha and ten from the Rajya Sabha in accordance with the system of proportional representation by single transferable vote. The Committee will examine the recommendations of the Commission and report their opinion to the President.

Implementation of the Recommendations of the First Official Language Commission.

The Official Language Commission was, accordingly, appointed in 1955 with Sri B.G. Kher as Chairman, and it submitted its Report in 1956, which was presented to Parliament in 1957 and examined by a joint Parliamentary Committee. The recommendations of the Parliamentary Committee upon a consideration of

the Report of the Official Language Commission were as follows—

- (a) The Constitution contains an integrated scheme of official language and its approach to the question is flexible and admits of appropriate adjustment being made within the framework of the scheme.
- (b) Different regional languages are rapidly replacing English as a medium of instruction and of official work in the States. The use of an Indian language for the purposes of the Union has thus become a matter of practical necessity, but there need be no rigid date-line for the change-over. It should be a natural transition over a period of time effected smoothly and with the minimum of inconvenience.
- (c) English should be the principal official language and Hindi the subsidiary official language till 1965. After 1965, when Hindi becomes the principal official language of Union, English should continue as the subsidiary official language.
- (d) No restriction should be imposed for the present on the use of English for any of the purposes of the Union and provision should be made in terms of Cl. (3) of Art. 343 for the continued use of English even after 1965 for purposes to be specified by Parliament by law as long as may be necessary.
- (e) Considerable importance attaches to the provision in Art. 351 that Hindi should be so developed that it may serve as a medium of expression for all elements of the composite culture of India, and every encouragement should be given to the use of easy and simple diction.

Two Standing Commissions.

In pursuance of the above recommendations of the Parliamentary Committee the President issued an Order² on April 27, 1960, containing directions by way of implementing the above recommendations. The main direction was as regards the evolution of Hindi terminology for scientific, administrative and legal literature and the translation of English literature on administrative and procedural matters into Hindi. For the evolution of such terminology, the Official Language Commission recommended the constitution of two Standing Commissions. (A) For the development of legal terminology and preparation of authoritative texts of Central Acts in Hindi and other languages a Commission [known as the Official Language (Legislative) Commission] was constituted in 1961. It was abolished in 1976 and its functions have been assigned to the Legislative Department of the Government of India. (B) The other Commission [known as the Commission for Scientific and Technical Terminology] is working under the Ministry of Human Resources.

Of the other recommendations of the Official Language Commission, the following, inter alia, were adopted in the President's Order:²

- (i) English shall continue to be the medium of examination for the recruitment through the Union Public Service Commission but, after some time, Hindi may be admitted as an alternative medium, both Hindi and English being available as the media at the option of the candidate.

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(ii) Parliamentary legislation may continue to be in English but an authorised translation should be provided in Hindi. For this purpose, the Ministry of Law has been directed to provide for such translation and also to initiate legislation to provide for an authorised Hindi translation of the text of Acts passed by Parliament.

(iii) Where the original text of Bills introduced or Acts passed by a State Legislature is in a language other than Hindi, a Hindi translation may be published with it besides an English translation as provided in Cl. (3) of Art. 348.

(iv) When the time comes for the change-over, Hindi shall be the language of the Supreme Court.

(v) Similarly, when the time for change-over comes, Hindi shall ordinarily be the language of judgments, decrees or orders of Courts, in all regions; but, by undertaking necessary legislation, the use of a regional official language may be made optional instead of Hindi, with the previous consent of the President.

B. Of Inter-State Communications.

The Constitution further provides that the language for the time being authorised for use in the Union for official purposes {i.e., English} shall be the official language of communication between one State and another State and between a State and the Union. If, however, two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication instead of English [Art. 3461].

C. Of a State.

The Legislature of a State may by law³ adopt any one or more of the languages in use in the State or Hindi as the language to be used for all any of the official purposes of that State: Provide that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for the official purposes within the State for which it was being used immediately before the commencement of this Constitution.

There is also a provision for the recognition of any other language : the official purposes of a State or any part thereof, upon a substance popular demand for it being made to the President [Art. 347].

Until Parliament by law otherwise provides—

D. Language to be used in the Supreme Court and in the High Courts and for Ads, Bills, etc.

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

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(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

A State Legislature may, however, prescribe the use of any language other than English for Bills and Acts passed by itself, or subordinate legislation made there under. Similarly, the Governor of a State may, with the previous consent of the President, authorise the use of Hindi or any other language used for official purposes of the State, in proceedings in the High Court of the State, but not in judgments, decrees or orders (which must continue to be in English until Parliament by law otherwise provides) [Art. 348].

The foregoing provisions of the Constitution are now to be read subject to the modifications made by the Official Languages Act, 1963 and the Authorised Translations (Central Laws) Act, 1973 and the new Art. 394A, inserted in the Constitution in 1987.

Authorised Translations (Central Laws) Act, 1973.

In 1973, Parliament enacted the Authorised Translations (Central Laws) Act, 1973, to provide that when a Central Law is translated into a regional language (other than Hindi), and published in the Official Gazette, under the authority of the President, such translation shall be deemed to be the authorised translation thereof in such language.

Art. 394A.

The Draft Constitution as well as the Constitution adopted by the Constituent Assembly on the 26th November, 1949, was in the English language. After it was officially translated into Hindi, Art. 394A was inserted into the Constitution, by the 58th Amendment Act, 1987, in order to give it effective authority. In pursuance of this Article, the President published in the Gazette of India, the Hindi text which, according to Cl. (2) of Art. 394A, shall be construed to have the same meaning as the original text in the English language, and in case of any difficulty arising in this matter, the President shall direct the Hindi text to be suitably revised.

The provisions of the Official Languages Act (as amended) are—

Official Languages Act, 1963.

I. Continuance of English Language for Official Purposes of the Union

and for Use in Parliament. Notwithstanding the expiration of the period of fifteen years from the commencement of the Constitution, the English language may, as from the appointed day, continue to be used, in addition to Hindi,—

- (a) for all the official purposes of the Union for which it was being used immediately before that day; and
- (b) for the transaction of business in Parliament.

II. Authorised Hindi Translation of Central Acts, etc. (1) A translation in Hindi published under the authority of the President in the Official Gazette on and after the appointed day,—

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- (a) of any Central Act or of any Ordinance promulgated by the President, or
- (b) of any order, regulation or bye-law issued under the Constitution or under any Central Act, shall be deemed to be authoritative text thereof in Hindi.

(2) As from the appointed day the authoritative text in the English language of all Bills to be introduced or amendments thereto to be moved in either House of Parliament shall be accompanied by a translation of the same in Hindi authorised in such manner as may be prescribed by rules made under this Act.

III. Authorised Hindi Translation of State Acts in Certain Cases. Where the Legislature of a State has prescribed any language other than Hindi for use in Acts passed by the Legislature of the State or in Ordinances promulgated by the Governor of the State, a translation of the same in Hindi, in addition to a translation thereof in the English language as required by Cl. (3) of Art. 348 of the Constitution, may be published on or after the appointed day under the authority of the Governor of the State in the Official Gazette of that State and in such a case, the translation in Hindi of any such Act or Ordinance shall be deemed to be the authoritative text thereof in the Hindi language.

IV. Optional Use of Hindi or other Official Language in Judgments, etc., of High Courts. As from the appointed day or any day thereafter, the Governor of a State may, with the previous consent of the President, authorise the use of Hindi or the official language of the State, in addition to the English language, for the purposes of any judgment, decree or order passed or made by the High Court for that State and where any judgment, decree or order is passed or made in any such language (other than the English language), it shall be accompanied by a translation of the same in the English language issued under the authority of the High Court.

V. Inter-State Communications, (a) English shall be used for purposes of communication between the Union and a State which has not adopted Hindi as its official language, (b) Where

Hindi is used for purposes of communication between one State and another which has not adopted Hindi as its official language, such communication in Hindi shall be accompanied by an English translation thereof.

Special Directives relating to Languages.

The Constitution lays down certain special directives in respect of not only the official language but also the other languages in use in the different parts of the country, in order to protect the interests of the linguistic minorities.

A. As regards the official language—the directive is, of course, for the promotion and development of the Hindi language so that it may serve as a medium of expression for all the elements of the composite culture of India and this is laid down as a duty of the Union; and the Union is further directed to secure the enrichment of Hindi, by assimilating without interfering with its genius, the forms, style and expressions, used in the Hindustani and other languages (specified in the Eighth Schedule) and by

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Sanskrit neglected.

giving primary importance to Sanskrit in this respect [Art. 351]. The Government of India has already implemented this directive by taking a number of steps for the popularisation of Hindi amongst the non-Hindi speaking people, particularly its own employees.⁴ But not enough has been done for the promotion of Sanskrit so as "to secure the enrichment of Hindi by drawing on Sanskrit", which the State is enjoined to do, by Art. 351. The views of the Author regarding importance of Sanskrit have been supported by the Supreme Court.⁵ The Court has clearly spelt out that in view of the importance of Sanskrit for nurturing our cultural heritage it is necessary to include it as an elective subject at the secondary school level. The Education Minister of the Charan Singh Government promised to set up a Sanskrit Academy, but that Government did not survive to implement it.⁶

Violation of Arts. 27,351.

On the other hand, an Urdu Academy has been set up in West Bengal, at Government expense, on October 27, 1979. There cannot be any objection from any enlightened man to any effort for the promotion of any Indian language, at least any of those specified in the 8th Schedule. But there is a constitutional aspect which does not appear to have been duly considered by the authorities. If the newspaper reports be correct, one of the objectives of this Academy is to translate religious scriptures like the

Quoran, at the expense of the Academy.⁷ If the resources of the Academy be the public revenues, raised by taxation, any appropriation of such resources for the promotion or maintenance of any 'particular religion' shall be hit by Art. 27. The reason behind Art. 27 is that India is a 'secular State' where all religions are on a status of equality so far as the State is concerned. If the contrary be permissible some other State Government may set up a language

Academy for the translation and dissemination of the scriptures of the Hindus like the Vedas, Bhagavad-Gita, while another Government may take up the translation and propagation of the Bible and so on, resulting in conflicts between the different religions under the auspices of the State.

If the State really wants to promote the languages at Government expenses, the only constitutional way would be to set up an Academy of languages, embracing all the languages in the 8th Schedule, so that Sanskrit, Urdu, Bengali, etc., would have an equal treatment, and all religious activities should be excluded from the programme of such an Academy, because there being numerous religions in India, there is a likelihood of some religion being excluded in, the venture, leading to a violation of Art. 27.8

As regards research into the Sanskrit language for enriching the vocabulary of Hindi [Art. 351], a branch should be opened specifically for this purpose and, if any activities are already being undertaken, they should be speeded up and the glossaries produced should be available to the people at a low cost. The extension of such an organisation itself will provide employment to Sanskrit scholars and thus provide incentive to the otherwise unprofitable study of Sanskrit.

B. For the protection of the other languages in use, the following directives are provided—

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(i) For the submission of representation for the redress of any grievance to any officer or authority of the Union or a State, the petitioner is authorised to use any of the languages used in the Union or in the State, as the case may be [Art. 350]. In other words, a representation cannot be rejected on the ground that it is not in Hindi.

(ii) Every State and other local authority within a State is directed to provide adequate facilities for instruction in the mother-tongue at the preliminary stage of education to children belonging to linguistic minority groups and the President is authorised to issue such directions to any State as he may consider necessary for the securing of such facilities [Art. 350A].

(iii) A Special Officer for linguistic minorities shall be appointed by the President to investigate all matters relating to the safeguards provided by the Constitution for linguistic minorities and to report to the President upon those matters. It shall be the duty of the President to cause all such reports to be laid before each House of Parliament and also to be sent to the Government of the State concerned [Art. 350B].

REFERENCES

1. The original Constitution enumerated 14 languages. This number became 15, by the addition of 'Sindhi', by the Constitution (21st Amendment) Act, 1967. The 71st Amendment Act, 1992 added Konkani, Nepali and Manipuri to make it 18.
2. India, 1961, p. 547.

3. In January, 1987, the Goa Legislative Assembly has passed the Goa Language Act, making Konkani as an official language of the Union Territory, in addition to Marathi/Gujarati.

4. India, 1984, pp. 69ff.

5. Santosh v. Secretary, (1994) 6 S.C.C. 579.

6. Recently, an organisation called Rashtriya Sanskrit Sansthan has been set up at New Delhi, but its efforts are primarily directed towards the promotion of the study of Sanskrit at the higher level [India, 1987, p. 911. Unless Sanskrit is made a compulsory subject at the root, none would be available in the next generation to carry on post-Graduate study in Sanskrit. The Sansthan should also be transformed into a Sanskrit Academy, with power to translate Sanskrit scriptures and literary works, just as the Urdu Academy established by the L.F. Government in West Bengal, has.

In should never be forgotten that Sanskrit is the base of Indian 'heritage and culture' which the Constitution seeks to ensure [Arts. 51A(f); 351]. Anything added to it has taken place after the Sanskritic culture had prevailed over this land for some three or four thousand years.

7. Such objective will not be covered by Art 350A, noted under head B.

8. See, further, Author's Commentary on the Constitution of India, 6th Ed., Vol. D, pp. 220-21, f.n. 6.

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CHAPTER 34 HOW THE CONSTITUTION HAS WORKED

I. ONE who has to study the Indian Constitution today may come to grief if he has in his hand only a text of the Constitution as it was promulgated in November, 1949, for, momentous changes have since been introduced not only by numerous Amendment Acts but by scores of judicial decisions emanating from the highest tribunal of the land. Nearly every provision of the original Constitution has acquired a gloss either from formal amendment or from judicial interpretation, and an account of the working of the Constitution, over and above this, would in itself be a formidable one.

Multiple Amendments of the Constitution.

At the first instance, the passing of eighty three Amendment Acts (see Table IV, post) in a period of fifty years can hardly be passed over unnoticed. In the American Constitution, the process of formal amendment prescribed by the Constitution to changes in social conditions has fallen into the hands of the Judiciary even though it ostensibly exercises the function only of interpreting the Constitution. Instead of leaving the matter to the slow machinery of judicial interpretation, our Constitution has vested the power in the people's representatives and, though the final power

of interpretation of the Constitution as it stands at any moment belongs to the Courts, the power of changing the instrument itself has been given to Parliament (with or without ratification by the State Legislatures) and, if Parliament, acting as the constituent body, considers that the interests of the country so require, it can amend the Constitution as often as it likes. The ease with which these Amendments have been enacted demonstrates that our Constitution contains the potentiality of peacefully adopting changes some of which would be considered as revolutionary in other countries.

The real question involved in this context is whether it is the Judiciary or a constituent body which should be entrusted with this task of introducing changes in order to keep pace with the exigencies of national and social progress. For reasons good or bad, the framers of our Constitution preferred the Legislature as the machinery for introducing changes into the Constitution, but the need for change is acknowledged even in countries like the U.S.A. where the task has been assumed by the Judiciary, taking advantage of the fact that the amending machinery provided in the Constitution was too heavy and unwieldy for practical purposes.

A little reflection will show that some of these changes, the need for which must be admitted even by critics, could not have been introduced by

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the Courts, by the application of the canons of statutory interpretation which are firmly embedded in our Courts. An instance to the point is the insertion of the word 'reasonable' to qualify the word 'restrictions' in Cl. (2) of Art. 19 (by the First Amendment). Without such a qualification, the engine of judicial review would have been altogether excluded from the field of legislative encroachment upon the freedom of expression, for, it was not open to any Court, unless it was determined to do violence to the canons of interpretation, to supply the word 'reasonable' which had been inserted by the makers of the Constitution in all other Clauses of the Article but omitted from Cl. (2). The Seventh Amendment, again, was necessary to provide for the territorial reorganisation of the country which could not be made by the makers of the Constitution, before promulgating it in 1949. Similarly, the Tenth, Twelfth, Thirteenth, Fourteenth, Thirty-fifth, Thirty-sixth, and many other Amendments have been necessitated by the acquisition of new territories or the upliftment of the political status of existing territories, which are obviously for the benefit of the nation.

At the same time, one cannot help observing that so frequent and multifarious amendments of the Constitution, some of which might have been avoided or consolidated, have undermined the sanctity of the Constitution as an organic instrument.

Vital changes made by the 42nd to 44th Amendments.

Special mention should, however, be made of the 42nd Amendment Act, 1976, by which Congress Government, taking advantage of its monolithic control over the Union as well as the State Legislatures, effected comprehensive changes in the Constitution, overturning some of its bedrocks.' So widespread and drastic was the impact of this Amendment Act that it would be proper to call it an Act for 'revision', rather than 'amendment' of the Constitution.

As a result of popular resentment against such drastic changes, the Janata Party was voted to power at the general election which was held as a result of dissolution of the Lok Sabha at the instance of Mrs. Gandhi early in 1977. After several reverses, owing to their lacking a 2/3 majority in the Rajya Sabha, the Janata Government succeeded in enacting the 43rd and 44th Amendment Acts (1977, 1978), which wiped out many of the new provisions introduced by the 42nd Amendment Act, restoring the pre-1976 text of the Constitution, on many points. But the total elimination of the right to property from the Part on Fundamental Rights is an additional contribution of the Janata Government, which is bound to have far-reaching effects.

A case for revision of the Constitution, instead of piecemeal amendments.

But in view of the mutilation of the Constitution so far made by endless piecemeal amendments, inevitably resulting in confusion and inflicting injury upon the dignity and solemnity of the Constitution, an impartial observer may suggest that a Commission for the revision of the Constitution should be set up to examine, objectively, each of the existing provisions in the light of suggestions for amendment from the Government as well as the citizens and to recommend the enactment of one comprehensive Amendment Act or a revision of the Constitution itself. In a country like the United States where the written Constitution is sanctified as the Bible of the Nation, nobody

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could imagine that a Government, because it commands unquestionable majority in the Legislature, should amend the Constitution as often demanded by its Departments or in the manner recommended by the political Committees of the Party in power, as has happened in the case of the 42nd, 43rd and 44th Amendments in India.

In case the Government ever accepts the Author's suggestion to revise the Constitution,² the further suggestion is that the Constitution should be amplified, by inserting in it provisions relating to matters on which it is silent, or it is left to conventions or the goodwill of those who are to administer those matters respectively,—because in the absence of such codified provisions, much confusion has arisen not only amongst the masses who have little knowledge about the British conventions of Cabinet Government or the common law privileges of the British Parliament, but amongst the administrators themselves. Though many such instances may be found upon a thorough examination, I shall illustrate my point with reference to these two instances.

To codify: A. Conventions.

A. Though the Cabinet system of government was adopted by the

framers of the Indian Constitution both at the Union and State (subject to the discretionary sphere left to the State Governor) levels, the British Cabinet system is a complicated outcome of history and the sagacity of trained politicians and even then, as veteran scholars have pointed out, it is a difficult task to formulate clear-cut propositions, relating to the conventions upon which the system is founded. Naturally, in India, there has been much controversy both at the

Centre and the States to what course should be taken by the President or the Governor in the matter of selecting a person to form a government in a situation where no party commands a clear majority; conversely, what action should be taken by the constitutional head of the State where it is alleged against a party in power that it has lost majority in the popular House of the Legislature by reason of defection or the like; whether the constitutional head has the power to dismiss the Prime Minister or Chief Minister, i.e., the Council of Ministers collectively, and, if so, when. Though there is scope for controversy on such questions, it is not wholesome for the country if the Governors of two States or the President of the Union take divergent steps in the same or similar situation. Questions relating to the exercise of the pardoning or Ordinance-making powers have also created confusion. Even though it may not be possible to make comprehensive provisions relating to such matters or to apprehend all possible situations of doubt or controversy, it would be possible and profitable to formulate those propositions which have already been laid down by the Supreme Court or on which there has been a fair amount of consensus amongst the political parties as a result of the working of the Constitution for over fifty years.

B. Privileges of Legislatures.

B. When the Constitution was drafted in 1948-49, the unconditioned privileges of the British House of Commons were sanctified by the Indian Constitution, but only as a temporary measure, because it was not practicable, at once, to grapple with the difficult problem of codifying the mass of British precedents which constitute the foundation of privileges of Parliament in

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England. But more than five decades have passed since then, and today, even if the task of a fairly exhaustive codification may not be completed all at once, many of the principles have been settled by judicial decisions of the highest Court and the consensus of precedents laid down by the Presiding Officers of the Houses of the Union and State Legislatures. It is not conducive to a smooth working of the Parliamentary system in this poor and developing country to have a war between the Courts and the Legislatures as has happened on occasions,³—a repetition of which can be averted only by a proper solution embodied in the Constitution itself. Those who still argue in favour of a 'High Court of Parliament', exercising powers and privileges, such as the British House of Commons, are blinded by the initial fallacy that we have a written Constitution which limits the powers of all the organs of the State, including the Legislatures and that the latter cannot claim any overriding power (in the name of privileges) to interfere with the jurisdictions vested in the superior Courts by Arts. 32 and 226 of the Constitution itself. The Constitution-amending body can no longer fight shy of facing this unfortunate and uncanny problem of which there cannot be any authoritative solution so long as the Constitution itself is not amended, to incorporate that solution which is acceptable to the special majority of the constituent body. Even if the code of privileges be not exhaustive it is better to start with a nucleus rather than a vacuum.

Implementation of the Directive Principles.

II. Of the achievements of the Executive and the Legislature in the working of the Constitution, one cannot fail to refer to the progress made in implementation of the Directive Principles of State Policy, which shows that the Government in power has not taken them as 'pious homilies', as was apprehended by critics when they were engrafted into the Constitution. Though the implementation of these Directives falls mostly within the province of the States, the Union has offered its guidance and assistance through the Planning Commission. The Constitution of India, it should be remembered, was not intended to serve merely as a charter of government but as a means to achieve the social and economic transformation of the country peacefully and this goal has been achieved to the extent that the Government has succeeded in implementing the Directive Principles.

By the insertion of Art. 31C by the Constitution (25th Amendment) Act, 1971, the Congress Government demonstrated that it was determined to implement the directives and that if the Fundamental Rights came in the way, it would not hesitate to amend even the Fundamental Rights. The Supreme Court has also adhered to this view,⁴ though in its earlier decisions, it had imputed pre-eminence to the Fundamental Rights.

The greatest failure of the Government in implementing the Directives has been with respect to the enactment of a uniform civil code [Art. 44], which we shall presently see.

In enforcing the Directive for Prohibition of consumption of intoxicants, too, some Governments are giving more importance to revenue than the 'fundamental principle of governance' embodied in Art. 47. That is why it has not been substantially implemented in the course of five decades.

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Some State Governments have gone to the extent of withdrawing it after having once imposed Prohibition.

Trend towards the Unitary System.

III. In the federal sphere, it may be stated that most of the formal and informal changes which have taken place since the commencement of the Constitution have been to strengthen Central control over the States more and more. While the federal system, by its nature, has generated State consciousness more than under the British regime, the Centre has been endeavouring more and more to assume control over the States not only by Constitutional amendment (Chap. 5, ante) and legislation but also by setting up extra-Constitutional bodies like the Planning Commission,⁵ the National Development Council,⁶ and numerous Conferences. As regards the predominant position of the Planning Commission, a learned author⁷ observed—

"The emergence of the Planning Commission as a super-government has disturbed the concept of the autonomy of the States. It has also impinged on the authority of the States in matters vital to its administration such as education, health and other welfare services."

The Government have, since July, 1967, reorganised the Planning Commission,⁸ with changes in its status and functions (as recommended by the Administrative Reforms Commission),

constituted by whole-time members (and headed by the Prime Minister,⁵ as before), as a result of which the Commission will cease to have any executive functions and will confine itself to the formulation of plans and the evaluation of their performance.

No less momentous is the increasing dependence of the States upon the Union in the matter of finance. Not only is the financial strength of a State dependent upon the share of the taxes and grants-in-aid as may be allotted to it by the union upon the recommendations of the Finance Commission, there is a general sense of irresponsibility in financial matters in the States founded upon the assumption that the Union will ultimately come to its aid or, else, the National Plan will fail.

But, notwithstanding this unitary trend, federation has not yet proved to be a failure in India, particularly because the Supreme Court has steadfastly enforced the distribution of powers laid down in the Constitution,⁹ without acknowledging any pre-eminence of the Union so as to obliterate that federal distribution, except in solitary instances so far.¹⁰

The trend towards greater cohesion is, in fact, an index not of the failure but of the success of the federal system of India. One of the defects of a federation, according to classical writers, is its weakness. Credit must go to India if she succeeds in attaining unitary strength upon the foundation of a federal governmental system over an unwieldy territory inhabited by heterogeneous elements with radically conflicting ideologies. The founders of our Constitution had realised that a federal system was the only system suitable to a country like ours, consisting of so many heterogeneous elements. But, in view of our external dangers, existing and potential, they sought to impart into the federal system the elements of adjustment by resorting to which the system might acquire the strength of a unitary system in case of external aggression or other extraordinary circumstances. That it has succeeded in attaining this objective" has been demonstrated by the

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working of our governmental system since the ominous aggression which had been set in motion by China in October, 1962 and is still being driven hard by the China-Pakistan axis, even after the debacle of Yahya Khan's Army in Bangladesh in 1971.¹² The situation on India's borders was made more serious and alarming by subsequent events such as the fall of the friendly government of Mujibur Rehman in Bangladesh,¹² the importation of Soviet Forces in Afghanistan together with the countervailing move of the United States to arm Pakistan with the most sophisticated weapons which can very well be used against India, as has happened in the past; and at the back of all this, looms the nightmare of the 'Islamic bomb', backed by American bases within Pakistan.¹³

Separatist forces at work.

IV. Recent unfortunate happenings in the Punjab, Kashmir and Assam have demonstrated that strong Central control is needed in India if not only federalism but the very existence of the Union of India is to be saved from separatist forces fighting for fragmentation and aggressive

provincialism, which, if undeterred, would undermine that national unity and integrity which forms the foundation-stone of the Constitution.

The sikhs.

A. So far as the Sikh demand¹⁴ is concerned, it would, if acceded to, put an end to the federal Constitution and is bound to raise similar demands from other States and minority communities,¹⁵ leading to the break-up of India as a nation. Though Anandpur Saheb resolution,¹⁶ which the Akalis intend to impose upon the Union by force¹⁷ does not itself speak of secession from the Union or to start an independent State of Khalisthan that is at the back of the movement, as evidenced by extraneous evidence.¹⁸ Apart from that, the demand that, after the formation of a compact State with adjoining Sikh majority territories, the Union shall have jurisdiction over that State only with respect to five subjects, viz., Defence, External Affairs, Posts and Telegraphs, Currency and Railway, puts their case even higher than that of Jammu & Kashmir. For, while practically the whole of the Union list (List I of the 7th Schedule to the Constitution) and a good number of items of the Concurrent list (list III) now extend to the State of Jammu & Kashmir, the Anandpur resolution would oust the jurisdiction of the Union over the entire Concurrent list, and a substantial portion of the Union list, e.g., those relating to communications other than Railways, Posts and Telegraphs, Banking, Insurance, Public Debt of the Union, Reserve Bank of India, Trade and Commerce with foreign countries, regulation of national industries, inter-State waterways, institutions of higher education, Elections to Parliament, Supreme Court and High Courts, Union taxation, and the like. The Akalis cannot claim inspiration from the instance of Jammu & Kashmir, because while the latter State has a history of its own, with international implications, Punjab had all along been an integral Province of India and, further, the Akalis do not constitute the entire Sikh population of Punjab,—the other Sikhs do not support the Akali demand; nay, they have failed to win over the Sikh President of India or even the Sikh Chief Minister of the State of Punjab. On the other hand, within the Akali Party, sprang up several leaders and in May, 1985, the leaders gave way to terrorists, led by the father of the Khalistan demand, Sant Bhindranwale.¹⁹

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Subsequent to the preceding events in July, 1985 (after the accession of Sri Rajiv Gandhi as Prime Minister), a momentous event took place, namely, that an agreement (called the 'Punjab Accord')²⁰ was entered into between the Prime Minister of India and Sant Longowal,—the head of the predominant group amongst the Akalis. According to this Accord, inter alia, the Anandpur Resolution would be referred to the Sarkaria Commission and some Hindi-speaking areas of Punjab would be transferred to Haryana in lieu of Chandigarh which would come over to Punjab from Haryana.

The Punjab Accord, however, failed to make any settlement of the Punjab problem (upto July, 1992) for the following reasons—

(a) The Chief Minister (Surjeet Singh Barnala) failed to submit the State Government's case to the Sarkaria Commission.

(b) The Commission appointed to find out the Hindi-speaking areas of Punjab which were to be given over to Haryana in lieu of Chandigarh failed to complete its work owing to repeated objections of various sorts being raised by the Punjab Government.

(c) The Mann Group, elected to Parliament in November, 1989, raised new demands every day thus deferring any amicable settlement with the National Front Government which was ready for a talk.

(d) Terrorism is continuing unabated and each morning's newspaper reports some dozen murders, bank loot, and the like.²¹

In deference to the opposition to any further extension of President's Rule (which had been imposed in 1987), election was held in Punjab in February, 1992, at which Congress (I) formed Government with Mr. Beant Singh as the Chief Minister. It seems that as a result of unabated Police action in Punjab, the terrorists have left Punjab but dispersed throughout India, from Uttar Pradesh to Andhra Pradesh, West Bengal.

The Assamese.

B. The case of the agitators in Assam is peculiar. They do not demand secession, but they want 'Assam for Assamese'²² Though at the beginning, their demand was mystified by the intervention of political parties, the massacre of hundreds of Bengalis,—Hindus and Muslims,—developments since January, 1983 leave no doubt that the agitators are determined to purge Assam of all people who are not of Assamese origin. These non-Assamese, however, consist of different categories:

(a) In so far as the citizens of other States, such as West Bengal or Bihar, are concerned, who have settled in Assam for purposes of profession or business, the agitators must remember that these citizens of India have a fundamental right to reside and settle in 'any part of the territory of India', under Art. 19(l)(e). To oust them from the State of Assam by violence would be to give a decent burial to the Constitution, and if Assam is allowed to succeed, other States would most likely to follow, breaking federal India into pieces.

The first task of the Government and the agitators should, therefore, be to identify these 'citizens of India', i.e., those who have acquired citizenship of India under Art. 5 or 6 of the Constitution or under the provisions of the Citizenship Act, 1955. These people are not 'foreign nationals'. They can be found out only through some peaceful machinery and not force.²³⁻²⁴

(b) On the other hand, there are illegal immigrants from Bangladesh (erstwhile East Pakistan); they are, in fact, 'foreign nationals'. The

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Government of India, however, contends that it has got its obligations under an international agreement, so that they cannot be driven back to Bangladesh; but even then, the Government of India can raise the problem with Bangladesh diplomatically or before some international forum,

the details of which cannot be discussed in this book. The humanitarian ground raised by the Government of India in favour of the illegal immigrants condemns the Government itself for its dilatory policy. Even apart from Assam, lacs of Muslim immigrants and the 'long marchers' from Bangladesh are constantly infiltrating into West Bengal and are being sheltered by the Muslims in the bordering territories of West Bengal, and in course of a few years or even months, their case to remain in West Bengal will be ripened by the evidence of ration cards, electoral roll, etc.,²⁵ in the same manner as in Assam, if years pass on without any firm action being taken against such infiltration from another 'foreign' State,—as would never be tolerated (at such mass scale) by any independent State (other than India) in the world.

The problem of infiltration from Bangladesh.

Not only the security of India but the entire social and political structure of India has been threatened by the mass infiltration of Bangladeshis into the border States of Assam and West Bengal.

The question involved is not communal but legal, namely that of sovereignty. No independent State, other than India, would welcome infiltrators from another State. As early as 1964-65, cases brought before the Calcutta High Court clearly demonstrated that large number of immigrants had overstayed after expiry of their visas, with the support of their kinsmen or friends in the bordering districts of West Bengal. In pursuance of the judgments passed in these cases, the Police pushed back many of these immigrants into Bangladesh, but the operation was stalled by the utterance of a Chief Minister of Bengal that he himself was neither a Hindu nor a Muslim, and that he would view the problem of illegal immigration or infiltration as a humanitarian problem caused by a shortage of food or employment in Bangladesh.²⁶

The Government of India also shut their eyes to the problem even when some leaders in Bangladesh threatened to conduct a 'long march' of Pakistani nationals through India or even when the infiltrants demanded Indian citizenship at a mammoth gathering at the Calcutta Press Club under the nose of the Police.²⁷ They were roused to their senses only when the infiltrators reached the capital city of Delhi (as did Bahadur Shah Zafar!), and when they are demanding Indian citizenship on the strength of their Ration Cards and entries in the electoral roll,²⁸ and forming Muslim pockets²⁹ which would lead to a demand for their autonomy.

It is a pity that the same Central Government who had earlier overlooked the illegal immigration as a human problem has now held it to be a serious threat to the integrity of India²⁹ at a conference of Chief Ministers called by the Centre, and the same Party in West Bengal which had so long prized the votes of the infiltrators,²⁹ has made a clean breast of the modus operandi adopted and the seriousness of the problems created by them.²⁹

Apart from anything else, infiltration has thus come to operate as a divisive force threatening the integrity of India, which can be rooted only by

firmly carrying out a plan of action after realising the gravity of the situation, instead of using the illegal infiltrants as pawns in the game of vote-hunting.

Language as a separalist force.

Another such division factor is that the people having a separate language must have a separate political status and autonomy. The initial blunder of the Government in this behalf was committed when the States were reorganised on a primarily linguistic basis and that current is still unimpeded, thus raising the original number of States in Parts A-B (18) to 28, in 2000, and the scramble for Gorkhaland, Bodoland, Jharkhand, Uttarkhand and the like is continuing at different levels³⁰ Jharkhand and Uttaranchal (Uttarakhand) have been created as new States by carving their territories out of the territories of the Bihar and the Uttar Pradesh in 2000 (see Table III)]. To concede any form of separate status, such as the formation of a Union Territory, ultimately leads to the demand for full-fledged Statehood.

A formidable corollary from the linguistic demand is the struggle for getting one's language included in the 8th Schedule of the Constitution. Obviously, there is little material gain from such inclusion. The only two relevant provisions of the Constitution are Arts. 344(1) and 351. The former gives the people representing a language specified in the 8th Schedule to have a member in the Official Language Commission and the latter gives that language to be considered for contribution towards the development of the Hindi language. The real motive behind the struggle for inclusion of a particular language, therefore, is political, namely, to lay the cornerstone for demanding a separate political entity for the people speaking that language, as in the case of Gorkhaland.³⁰ Be that as it may, the demand for every language to be included in the 8th Schedule is wild because there are as many as 1652 languages in India (vide Table I). Hence, there must be standard according to which the status of the 8th Schedule may be conferred on a language. Unfortunately, there is no such standard laid down in the Constitution itself and that is opening an avenue for diverse factions to raise demands which, if conceded, would lead to a suicidal fragmentation of the Union. Outside the Constitution, of course, there is an understanding that only languages which are spoken by over one lakh of people are entitled to enter into the 8th Schedule (Table I). But this understanding is too feeble to resist indiscriminate claims from any faction which may gather force enough to intimidate the Government.

It is lamentable that notwithstanding the foregoing warning offered by the Author in the 13th Edition of his Introduction to the Constitution of India, Government of India failed to amend the Constitution to lay down any definite standard for inclusion in the 8th Sch. and, instead, they have been obliged to amend the 8th Sch. itself³¹ to include three new languages, viz., Konkani, Manipuri and Nepali, because of the time being, their demand became irresistible. But even then the case for the elevation of other languages continues unabated. Curiously, Mr. Ghising is not contented with the inclusion of Nepali alone; he wants additional entry for Gorkhali, contending that it is a language separate from Nepali which is for all residents of Nepal, apart from the Gorkhas.

A more striking event is the formation of a new Party styled All-India Urdu More ha,³² with the manifesto that if they are returned at the ensuing election they would instal Urdu as the second Official Language. Mere inclusion of Urdu in the 8th Sch. is not enough for them. This illustrates the political significance of the language agitation as a separatist force.

Financial inadequacy in States.

As to the working of the federal system, there is very little doubt that the allocation of the financial resources to the States by the Constitution of 1949 has proved to be cramping for carrying out the legitimate functions of the States, however narrow they might be. After the general election in 1980, the party in power at the centre was not in control of all the States. Different parties subscribing to different ideologies are in power in various states; these parties have been demanding revision of financial provisions of the Constitution. The Union shall have to sit with the States politically, to ascertain how much of revision of the financial provisions would satisfy the demands of the States which seek greater autonomy,³³ consonant with national security, and then to implement the findings, so that the unity and strength of the Nation may not be undermined by the Union-State carriage being driven to two opposite directions. In such a situation prudence is called for on the part of both the Union and the States. Either party must not forget that the basis of a federal system is the maintenance of what Dicey called the 'federal sentiment'. To be precise, the Government of India must realise that they cannot do without the States and that the strength of India lies in the strength of the border States, in particular. On the other hand, West Bengal or Jammu & Kashmir can hardly forget that they cannot maintain their political entity without the protection of the Union against powerful foreign aggression. It is suicidal for federalism if the States ruled by Opposition Parties consider the Union Government as their foe or 'rival'³⁴ and go on carrying on a campaign of vilification. Nevertheless, there is much truth in the orientation of these States that their so-called autonomy would be hollow without a larger financial freedom. A revision³⁴ of the provisions of the Constitution relating to this matter should be undertaken as soon as the Government gathers the strength to carry such vital amendment of the Constitution.

What is more important is that there should be a greater emphasis on consultation with and consent of the States in areas affecting them vitally but not affecting the integrity of the Union, so as to establish a truly 'co-operative federalism' in India.

Judicial Review.

V. The most remarkable achievement in post-Constitution India is the exercise of the power of judicial review by the superior Courts. So long as this power is wielded by the Courts effectively and fearlessly, democracy will remain ensured in India and, with all its shortcomings, the Constitution will survive. The numerous applications for the constitutional writs before the High Courts and the Supreme Court and their results testify to the establishment in India of 'limited Government', or, 'the Government of laws, not of men', as they call it in the United States of America. The Supreme Court has well performed its task of protecting the rights of the individual against the Executive, against oppressive legislation and even against the Legislature itself, when it

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becomes over-zealous in asserting its privileges not only against the individual but even against the Judges.³⁵

At the same time, it should be observed that neither the guarantee of Fundamental Rights nor its adjunct,—Judicial Review,—could have full play during the first quarter of a century of the working of our Constitution owing to their erosion by Proclamations of Emergency over a substantial period of time.

The period of 15 years, when Arts. 14, 19, 21 and 22 remained suspended owing to the operation of Art. 358 and of Orders under Art. 359, can hardly be overlooked. It is true that the Emergency provisions are as much a part of the Constitution of India as any other, and that history has proved the need for such powers to meet extraordinary situations, but, broadly speaking, if the application of the Emergency provisions overshadows the other features of the Constitution, the balance between the 'normal' and the 'emergency' provisions is palpably destroyed. Of course, the Janata Government has hemmed in the Emergency provisions in Arts. 352 and 356, by giving a larger control to Parliament over the exercise of such power, under the 44th Amendment Act, 1978. Nevertheless, even apart from Emergency, there has been an astounding erosion of Fundamental Rights owing to multiple amendments of the Constitution.

As I pointed out in the previous Editions, the means to prevent any such conflict between competing interests is to process all proposals for constitutional amendment through an expert and objective machinery, which would ensure the progressive adaptation of the Constitution to the Copernican changes in the social, economic and political background, apart from the views of the political supporters of the Party in power and the bureaucrats.³⁰ This purpose would not be served by Sarkaria Commission, which was confined to 'Centre-State Relations'.

A case for revision of the Constitution.

It can be served only by setting up a Commission for the comprehensive revision of the Constitution which has also been mutilated by multiple amendments during the half century of its working, as mentioned at the outset of this Chapter. Any piecemeal reference to the existing

Law Commission, with respect to particular provisions of the Constitution will only aggravate the anomaly.

Even though the power of formal amendment has been conferred upon Parliament by Art. 368 of the Constitution and the scope of resorting to the Judiciary to introduce changes has been reduced by making the process of amendment easier than in the U.S.A., the working of our Constitution has opened the avenue for judicial review in India in nearly the same way as in the U.S.A.

Paradoxically, the urge for judicial intervention has arisen from the very tendency of the Legislature to make frequent amendments to the Constitution, which were eating into the vitals of the Constitution (which the Supreme Court called its 'basic features'). Hence, asserted the

Court, it could set aside even an Act to amend the Constitution, not only on (i) a procedural ground, viz., that the procedure laid down in Art. 368 has not

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been complied by the relevant Bill, but on (ii) the substantive ground, viz., that the amending Act has violated one or other of the basic features of the Constitution.³⁷

Conversely, it has come to be held that if the Legislature is not prompt enough to implement the provisions of the Constitution, the Court has the duty to make the changes necessary to adopt the demands of a progressive society.³⁸ In this mission, the Court has propounded two doctrines—

- (a) The Court is the exclusive and final interpreter of all provisions of the Constitution.³⁷
- (b) The Court has the duty to make the ideals enshrined in the Constitution a reality,³⁹ and to meet the needs of social change in a welfare society.³⁸
- (c) This duty would extend even to the implementation of the 'Directive Principles' in Part IV, which were 'not enforceable by any Court' according to the Constitution itself [Art. 37].⁴⁰

Novel trends in Judicial Review: Judicial activation.

If a rose has its thorns, so must Judicial Review—the flower of Indian constitutionalism,—has its thorns, as has been demonstrated by the fact that, during the last decade our Supreme Court has been evolving novel doctrines, such as that of 'basic structure' or 'basic features' or 'prospective overruling' 'unenumerated' fundamental rights,—the foundation for which is not apparent on the face of the Constitution. In the present context, suffice it to point out that if this trend is not curbed, it would lead to unwholesome consequences, however well-intentioned the authors of such judicial innovations might be; for instance—

- (a) It would add to the confusion and uncertainty, which has been introduced by the multiple amendments made by the Legislature, to the dismay not only of the general public but also of the administrators and the courts themselves, in applying the written Constitution,—the very object of which is to infuse certainty and order into the political system.
- (b) It would engender bitterness between the Legislature and the Judiciary, if either of them seeks to checkmate the other,⁴¹—by means of amendment or judicial activism.
- (c) There is no knowing how far such novel doctrines may be extended, for, the final say, in the matter, rests with the Supreme Court itself. The result would be an amendment of the Constitution by the Judiciary, while Art. 368 of the Constitution specifically places the power of amendment in the legislative machinery.⁴²

Dangerous antinational trends in minority demands.

VI. The present Chapter would be incomplete without recounting the ominous trends which have been revealed since the General Election of 1980 as regards the ever-aggressive demands of the religious minorities—which run counter to the very foundations of the existing Constitution and which seek to ride roughshod over the pronouncements of the highest tribunal of the land,— not only on the ground that they are inconsistent with the provisions of the Constitution but

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because they are not consonant with the separatist ambitions of the religious minorities, the most grievous feature of this post-Independence development is that the Minorities have held up their vote as a bait and political leaders of the majority community belonging to different parties have indiscriminately swallowed that bait in their Election Manifestos and alliances, irrespective of the ideologies which ushered in the Independence of India and which form the bed-rock of the existing Constitution. In this background, it is the duty of an impartial academician to point out to a nationalist Indian (every Indian citizen cannot be assumed to have narrow political ambitions) that to accept such anti-nationalist demands of the Minorities (which, though sponsored by the Muslims, are being reiterated by the other minorities, such as the Christians, the Sikhs, the Buddhists, in so far as such demands would serve their respective communal or sectional interests) would be to tear India into pieces, with a second Pakistan for Muslim-majority areas⁴³ or a Christendom for the Christians;⁴⁴ or, an Islamic Republic⁴³ for the Muslims, or a Khalistan, so far as the Sikhs are concerned, or a Buddhist Republic so far as the Buddhists are concerned, and so on.

It is a matter of regret and concern that the manifestos of Congress (I) and the Janata Dal for the 1991 elections promised reservations for the minorities in government service and the Armed forces. The formation of Muslim Majority districts in Kerala and Bihar is another step furthering separatism.

Space would not permit a full treatment of all the demands hoisted by the religious minorities and for a fuller treatment, the reader should read the Author's Commentary on the Constitution of India, 6th Ed., Volume D, pp. 217-28; 232-37, where, though published early in 1978, these dangerous minority ideologies had been anticipated. The broader propositions involved may, however, be mentioned for the consideration of the average reader.

A. The major demand of the Muslim minority community now is for a proportional representation in the Legislatures and in the Services, according to their number.⁴⁵

This is, in fact, a resurrection of that baneful plant of the 'communal award' which had been inserted into the Indian body politic by the British Prime Minister Ramsay MacDonald and which had its inevitable culmination in the bloody Partition of India.

It is to prevent any repetition of such anti-national cleavages that the framers of the Constitution of free India proclaimed the Unity of the Nation to be the objective, in its Preamble, abolishing any reservation or representation on the basis of the religious colour of any individual or community; and such reservation, if made now, would violate the guarantee of equality in Arts. 15(1) and 16(1)-(2), as explained by the Supreme Court.⁴⁶⁻⁴⁷ Of course, all these guarantees

acknowledge the constitutionality of reservation or other special provisions in the interests of the 'backward classes', so that any community which is socially or educationally backward may be entitled to special consideration under the existing Constitution [Art. 15(4)], irrespective of its religious complexion. But that would not satisfy the Muslim or Christian minorities today. They want reservation for a man

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because he is a Muslim or a Christian, even if he be affluent; but to make any special provision for such a person would be a discrimination against the majority—violating the rights of equality guaranteed by Arts. 15-16.

To accede to these patently anti-national demands would need multiple amendments of the Constitution involving a decent burial of the doctrines of equality which the Supreme Court has built up⁴⁶ during nearly half a century, and to re-instal the monster of communal representation⁴⁷ which was banished from this land by the fathers of the Constitution.

B. Another demand of a minority community is that the Minority Commission, set up administratively, during the Desai regime, should be given a constitutional footing and a binding force to its recommendations.⁴⁵

Apart from the fact that none of the various investigatory Commissions set up by the existing Constitution has got more than recommendatory status, the broad consideration against any such drastic proposal is that, if conceded, it would mean a government by the Minority Commission, resulting in the abdication of the government by the peoples' representatives voted to power. To quote the words of Sir Samuel Hoare, who rejected the suggestion that the recommendation of the Public Service Commission should be binding on the Government (see Chap. 30, ante)—

"The danger is that if you give them mandatory powers you then set up two governments.

Besides, what would happen if the members of the Minority Commission (which must necessarily be a collegiate body representing the various minority communities) fail to agree (as has already happened since one of the Members of an erstwhile Commission, Prof. John, in a reasoned discourse, exposed the blatantly unreasonable, anti-national and anti-majority views and outlook of some of his colleagues)?⁴⁸ When the Commission is divided, it is obvious that Government must have the discretion to find out which of its views is consonant with reason and national interests. Even when the Minority Commission speaks in one voice, it cannot claim an imperative command simply because it is not a body responsible to the people. In short, to accede to the present demand would be to subvert the very institution of representative democracy which is the soul of the present Constitution, from its Preamble right up to its end.

Besides, what should be the proper jurisdiction of the Minority Commission, what would happen to any recommendation of the Commission which is ultra vires or outside that jurisdiction and who will decide whether any of its recommendations is beyond its jurisdiction? Insurmountable confusion and chaos would result if, in spite of these considerations, binding force is given to the recommendations of the Minority Commission.

The only proper jurisdiction of any such Commission, under the existing Constitution, would be the matters included in Arts. 25-30.49

It is to be noted that Parliament has enacted the National Commission for Minorities Act on 17 May, 1992, but that its recommendations [s. 9(1)(c), (2)-(3)], have not been given any obligatory force. The Act defines "minority" as a community notified as such by the Central Government.⁵⁰

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C. Another demand advanced on behalf of the Muslims is that the Directive in Art. 44 for establishing "a uniform civil code throughout the territory of India" should not be applicable to the Muslims who should be allowed to be governed by the Shariat as their personal law.⁵¹

This demand, again, seeks to put the clock back. At the time when the Constitution was framed, all such claims were considered and rejected on the grounds that (a) matters like marriage, inheritance and the like falling under the category of 'personal law' are secular matters having no essential relation to religion⁵² and that (b) without a common civil code, *inter alia*, the people of India, belonging to heterogeneous elements, could never be united into a nation. The provision in Art. 44 is nothing but an implementation of the objective of 'fraternity, unity and integrity of the Nation' which is not only enshrined in the Preamble to the Constitution, but is since buttressed by the Fundamental Duties in Art. 51A(c), (e) [see Chap. 8].

It may be mentioned that when the Law Commission of India took up the question of framing a common code of marriage and divorce, not only the Muslims but the Christians too opposed the move and that the very government which had induced the Hindus to give up their scriptural laws relating to these matters, gave way to the Minority resistance, for 'political' reasons. Now that Art. 51A has been embodied in the Constitution, a constitutional lawyer might urge that any opposition to Art. 44 by any member of any minority community would be a violation of Art. 51A, and any Government which yields thereto would be a party to such violation of the Constitution.⁵³

It is curious that while polygamy has been either abolished or controlled by Islamic States like Turkey and Bangladesh and is discouraged even in Pakistan, Indian Muslims are pressing to uphold it as their religious right, founded on the Shariat⁵⁴ and eventually protected as a fundamental right, by the Constitution of India.⁵⁵

As against this, the Government of India, in 1986, undertook legislation⁵⁵ to supersede the law declared by the Supreme Court in Shah Band's case⁵⁶ and deprived the Muslim women of the rights that they enjoyed in common with all other women. Such legislation retards the unity of the Nation as envisaged in the Preamble to the Constitution and at the same time, relegated India to a backward status even in the progressive Muslim world.

Notwithstanding all this, the Law Minister of the National Front Government is reported to have declared that a common Civil Code could be adopted 'only when the members of the minority communities demanded it'.⁵⁷ One wonders whether anybody has the authority to infuse these

words into Art. 44 of the Constitution, without an amendment thereof. It would be useful to write on the walls of Parliament the text of Art. 44—

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

D. Once one particular community is permitted to urge anti-national demands, it is natural that other minority communities will start clamouring for other privileges which might serve their own sectional interests.⁵³ The

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claim of Harijans who have embraced Buddhism to be still treated as "Scheduled Castes" for being entitled to the special reservations for Scheduled Castes in Parts III and XVI notwithstanding conversion to a religion other than Hinduism, may be cited as an instance (since conceded in 1990).^{53,58}

Claim of Hindu converts to other religions.

An impartial observer should wonder how such claim could be advanced by the Buddhist, Muslim or Christian converts in the face of the history and meaning of the very expression 'Scheduled Castes'. It is, in the first instance to be recalled that this expression is not a coinage of the Constitution of Independent India, but had its origin in Para 2 of the Scheduled Castes Order, 1936, which had been issued in pursuance of the direction in Para 26 of Sch. I of the Government of India Act, 1935—to determine the classes who were 'depressed classes' (called 'harijans' by Mahatma Gandhi). In this pre-Constitution Schedule Castes Order of 1936, it was categorically declared that no person who is an 'Indian Christian' or who professes 'Buddhism' or a 'tribal religion' should be regarded as a member of a Scheduled Caste even though he might originally have belonged to the list of Scheduled Castes prescribed by that Order. It does not appear that any Anglo-Indian or Buddhist ever protested against this provision of the Order of 1936.

The framers of the Constitution made two categories for favourable treatment—(a) Scheduled Castes, and (b) 'socially and educationally backward classes' even though they might not belong to any of the listed Scheduled Castes [Art. 15(4)]. The reason why the separate category of 'Scheduled Castes' was still maintained was that the caste system was prevalent only amongst Hindus and the Sikhs, owing to their social history, and it was this caste system which resulted in their degradation. Casteism is not professed by other religions, such as Christianity, Buddhism and Islam.⁵³⁻⁵⁴ That is particularly the reason why the makers of the Government of India Act, 1935 and the Orders thereunder did not entertain any reservation in favour of Hindu converts to those religions.

In the Scheduled Castes Order, 1950, which has been framed under the Constitution, it is, accordingly, laid down (para 3) that a person shall not be deemed to be a Scheduled Caste "if he professes a religion different from the Hindu or Sikh religion". The validity of this exclusion was challenged by persons converted to Buddhism under the auspices of Dr. Ambedkar, but it was rejected by a unanimous decision of the Constitution Bench of the — Supreme Court.⁵⁸ It is

patent truth that the Hindus form the target of conversion by proselytising religions, such as Christianity, Islam or Buddhism. Their object is to overturn the aforesaid decision of the Supreme Court. If any Government entertains softness to concede the demands of the converts from Hinduism, they would be abettors of conversion from one religion to another and an act of aggression against the non-proselytising Hindu religion,—quite contrary to the guarantee of secularism in Art. 25 of the Constitution.⁵⁸

Of course, if any section of converts comes under the 'socially and educationally backward' classes,⁵⁹ they would still be entitled to the special privileges under Arts. 15(4), 16(4). But that would be a different matter.⁵⁸

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The Constitution (Scheduled Castes) Orders (Amendment) Act, 1990 has, however, extended the reservations to converts to Buddhism also. This will further erode the unity of the nation. In fact, the Christian converts from Hinduism are agitating for similar reservation.⁶⁰

The advocates of guaranteeing further minority rights in India, supplanting the existing Constitution, if necessary, pretend to overlook the following broad considerations which distinguish the status of minorities in India from the international problem of minorities in post-War Europe which have inspired the International movement for minority safeguards:

No minority problem in India, in the international sense.⁶¹

(a) In the international sphere, the demand for special safeguards to protect the cultural or linguistic identity of minority communities has emerged from the principle that owing to war or like circumstances causing territorial changes without the consent of the people residing in those territories, the identity of such communities who have been torn asunder by circumstances beyond their control should be preserved from ethnic extinction, by affording proper safeguards through international Charters and national Constitutions.

The partition of India which left a portion of the Muslim community in India took place in the opposite way. The pre-independence demand of the Muslim community led by their acknowledged leader, Mr. Jinnah, was to have a separate homeland for the Muslims who, it was asserted, constituted a nation separate from the Hindus. The British Rulers conceded to this demand overruling the contention of the nationalist Indians that the Muslims and Hindus as well as the other people residing in India constituted one Nation and not two or more. The result of the acceptance of the two-nation theory was the lamentable partition of India and the creation of a separate Dominion, named Pakistan. As a sequel of such division, the Hindu leaders in India could have insisted upon an exchange of population between Pakistan and India, so that all the Muslims in undivided India could be transferred to Pakistan. But they did not prevent any Muslim from staying behind in India, as an Indian. Those who remained in India, did so of their free will and option. The partition was the seeking of their own community and not the result of any circumstances beyond their control, such as the First or Second World War which created the international minority problem in the world.

Of course, in consonance with the liberal attitude of the Hindu leaders, the framers of the Constitution of independent India embodied certain safeguards for minorities in like manner as the International Charters. But these safeguards were extended to all numerical minorities of all religions, languages and cultures and not to the Muslims in particular. The Muslims who opted not to go to Pakistan did so with their eyes open as to the safeguards they might get under the draft Constitution and not because of any covenant that they would be allowed to demand more and more to serve their sectional interests.

It is to be noted that the Universal Declaration did not contain any provision in respect of minorities so that the makers of the Indian Constitution had no international obligation to include in the Constitution of

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1949 any special provisions to protect the minorities. Subsequent thereto, in 1966, the International Covenant was adopted, including Art. 2746 as follows:

"Article 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Few people appreciate that these rights were anticipated by the makers of the Indian Constitution of 1949 and guaranteed them as the fundamental rights of the minorities in Arts. 25, 29, 30.

But to urge for political or other rights not provided for by the Constitution, would be not only unconstitutional but anti-national, because the makers of the Constitution wanted to build up one Nation, namely, Indian, in which persons belonging to the majority and the minority would embrace themselves into a Fraternity [Preamble]. To refuse to enter into the mainstream of Indian Fraternity on the plea of Muslim identity is nothing but a vestige of the two-Nation theory which the fathers of the Indian Constitution sought to banish once for all as a result of their bitter experience culminating in the lamentable Partition.⁴⁷ To reiterate: the advocates of the two-Nation theory went away to the 'homeland' for the Muslim community of their own choice. Some of them, however, stayed behind in India as their birth-place. After several decades of enjoying the special privileges of minorities under the Indian Constitution, they now refuse the embrace of Fraternity which the Preamble of that Constitution accords and seek to demolish the 'integrity' of the Indian Nation, by asserting that they are 'Muslim Indians'.

Pleading for them, one ex-Magistrate asserts that the Muslims remaining in India have made India "the largest Islamic nation in the world after Indonesia" [Article by Buch in the Statesman, dated 12-12-1990].⁶¹

(b) In the international sphere, it has been emphatically made clear⁶² that the only object of offering the minority safeguards was to protect the minority from discrimination by the majority who administer a country under a representative system of democracy. But this is on the

condition that the minority "must be loyal to the State of which they are nationals",⁶² and must not set up an 'imperium in imperio' founded on their minority status.

The framers of the Indian Constitution, too, fondly believed that, having established a secular State (i.e., a State which has no established religion of its own, and treats all religions equally) and offered safeguards for the preservation of the religious, cultural and linguistic identity of the minorities,—not only Muslims, but all the minorities who remained in India as Indian citizens, would be united as one Nation by the bond of 'fraternity' (Preamble). But this the Muslim community, in particular, has refused to achieve. Their demand is not only to create a homeland"³ for Muslims within India in the same process as led to the creation of the separate State of Pakistan, but even to supplant it by an Islamic State,⁶⁴ if possible. Only the other day, a responsible Muslim dignitary is reported to have said—"We are Muslims first and Indians afterwards . . Muslim culture is the mainstream in India and others must join it."⁶⁵ This is a resurrection of the two-Nation

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theory which led to the lamentable Partition of India which must be resisted by every nationalist Indian, irrespective of his party affiliation.

A student of the Indian Constitution can only wonder, with bewilderment, whether any such assertion runs afoul of the following provisions of the Indian Constitution⁶⁶—the Preamble; Art. 19(2), as amended by the 16th Constitution Amendment Act, 1963; Art. 51A(c),(e) [duty to promote 'common brotherhood amongst all the people of India transcending religious. . .or sectional diversities'], and whether this was the desideratum for which the nationalists in India consented to give up a part of their motherland in order to gain independence.⁶⁷

Disrespect for the motherland.

(c) I must, with profound regret, point out that there are Muslims, who are not even willing to call India their 'motherland', on the ground that Bankim Chandra's Vande Mataram, which was adopted by the 1896-session of the Indian National Congress, seeks to deify the motherland, while any kind of imputation of personality to God smacks of idolatry, as condemned by Islam. On this point, the reader may at once refer to p. 18 of India, 1987, where the translation of the first stanza of this song (by Sri Aurobindo) has been reproduced. To express gratitude to the soil from which you sprang and which sustains you with milk and honey every moment of your life is not idolatry, simply because it is called 'mother'.** In fact, the country of one's origin can only be described either as 'fatherland' or as 'motherland'. Since some political leaders who are not themselves Muslims, sometimes fan communal sentiments only to gain political favours from the minority community, it would be worthwhile to reproduce relevant provisions from the Constitutions of Russia and China, both of which have a considerable Muslim population who are obliged to swear by these provisions, without demur.

Article 62 of the 1977 Constitution of the U.S.S.R. says—

"Defence of the Socialist Motherland is the sacred duty of every citizen of the USSR. Betrayal of the Motherland is the gravest of crimes against the people."

The 1993-Constitution of the Russian Federation says—

"Art. 59.1.—The protection of the fatherland is the duty and obligation of the Russian Federation."

Article 55 of the 1982-Constitution of the Chinese Republic repeats, in no less emphatic terms:

"It is the sacred duty of every citizen to defend the motherland and resist aggression."

It would be pertinent, in this context, to mention that the erstwhile ruling Party in Turkey was named the 'Motherland Party'.

Any sane man must concede that what is not anti-Islamic elsewhere cannot be anti-Islamic in India simply because the Muslim vote is covetable to every party which seeks to come to power.

The reason why the song Vande Mataram was adopted as complementary to the National Anthem Jana-Gana Mana may be explained in the words of the President of the Constituent Assembly, on the 24th January, 1950, which were adopted with applause:

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"The composition consisting of the words and music known as Jana Gana Mana is the National Anthem of India, subject to such alterations in the words as the Government may authorise as occasion arises; and the song Vande Matram, which has played a historic part in the struggle for Indian freedom, shall be honoured equally with Jana Gana Mana and shall have equal status with it."

To resist the play of the tune of this song on the ground that it would impair communal harmony because it is an emblem of idolatry which is repugnant to Islam, is to forget the following facts:

(a) That it was sung in the 1896-session of the Indian National Congress, after omitting the larger part of the song which depicted the hands and limbs of the motherland (in order to obviate any objection from the Muslims) and retaining only some 20 words at the beginning of the song, for official use.

(b) That it is that trimmed composition which is printed at p. 18 of India, 1988-89, as the counterpart of the National Anthem.

(c) That the tune of that clipped composition that is played in the All India Radio and the T.V. at the beginning of each day's programme.

(d) That whatever might be the objection to particular words used in the latter portion of the song, the same cannot be raised as an objection to the music representing the earlier part of the

composition, except by a handful of men who have forgotten that what they could do during the days of the Muslim League cannot be done today because of the partition of India intervening.

- (e) That this music is an emblem not of communalism but of India's freedom.
- (f) To protest against it today is to turn the table up-side down, taking recourse to religious fanaticism.⁶⁹

Lack of national sentiment.

There is little doubt that this country, inhabited by heterogeneous elements belonging to different races and religions, can maintain her independence, only if she stands as one man, inspired by a national sentiment Every American, whether of English, Hebrew, Italian or Negro origin, regards the United States as his motherland for which he must fight against dangers at home or abroad, and that is why she has maintained her independence as a mighty Nation, notwithstanding so much of difference in race, religion and culture amongst her variegated population. The situation in India is just to the contrary. As in other matters, in India, even constitutional and legal questions are muddled up with politics, which, of course, means power politics. Few leaders today think of the Nation (as did the members of the First National Congress of 1885), apart from the interests of the political parties to which they belong and through which machine they scramble their way to the seat of power. It is even risky for an impartial academician to express his conclusions derived from a non-political interpretation of the Constitution to which everybody in India must profess to swear allegiance. It is difficult to convince people engrossed in power politics that to love his motherland is the birthright of everyone born in this country and that it does

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not need to don any particular cap or to hoist the banner of any particular hue.

Those who believe that communal harmony and the unity of India can be achieved only by granting more and more extra-Constitutional privileges forget the adage—'once an infant always an infant'; and also the fact that communalism is a vicious circle : the cry of 'Muslim in danger' gave birth to Hindu fundamentalism and, similarly, the slogan of 'Muslim sentiments' has given rise to the plea of 'Hindu sentiments'.⁷⁰ There will be no end to these pernicious currents or cross-currents so long as everybody is not told firmly that all of us, including the administrators, are bound by the Constitution which we adopted as the 'People of India', (-) under which there is no room for Hindu Indians or Muslim Indians, but there is only one Nation, namely, Indian, which is solidly bound by a tie of fraternity. If we have any respect for the Constitution of India, we must tear off from the political history of India those baneful pages which have become anachronistic and stand in the way of our national unity even after the adoption of the Preamble to the Constitution of divided India.

Let me, in the present context, stray into a personal (but relevant) digression. As a schoolboy (not knowing anything about politics or communalism) I was attracted by the national songs

which inspired the 'non-Co-operation' meetings and processions. One of the few that I still remember was—

"Ekbar tora ma baliye dak jagata-janara sravana jurak Tris kota kanthe mayere dakile thas dik sukhe hasibe ..."'

It depicted India as our motherland and exhorted all the people, without any exception, to call her 'mother'. The Muslim leaders who participated in these meetings and processions never objected to this representation of one's birth-place as 'mother' nor did the Muslim masses ever imagine that 'Muslim sentiments' would be prejudiced thereby, just as a staunch Hindu did not object to the singing of another piece—

"Ram Rahim no juda karo bhai, dilki sachha rakhooji . . . ,"

which exhorted the Hindus not to treat Ram and Rahim as different entities.

If today, half a century after independence, we are on the reverse gear, it is for the political parties to search their heart to find if they are in any way responsible for this great 'Fall' for which divided India shall have to lament through all futurity. It is no good throwing mud on each other. All of us have forgotten the history of our independence, the ideals of those who brought about that independence, and the Constitution which enshrines those ideals.

In fact, decline of national sentiments has generated obnoxious selfishness and greed, forgetting all the while that members of Parliament own the vote of the people on the shameless profession that they would serve the country. The result has been a fall of the ideal of Parliamentary democracy for which the Nationalists fought the crusade for independence. Few Parliamentarians today are duly cognizant of the basic provisions of the

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Constitution, the fundamental law of the land,—and the respect which it demands.

Failure of Parliamentary democracy.

The narrow-mindedness and selfishness of the 'representatives' of the people was shamefacedly illustrated when on the last day of sitting of the Ninth Lok Sabha, the M.P.s unanimously voted for ensuring their pension, and at an enhanced rate, even though the Lok Sabha was dissolved after a short duration,—without caring to see that a bill or motion having financial liability could not be introduced without the President's recommendation [Art. 117(1) of the Constitution].

A more fundamental cause of the trend towards the failure of Parliamentary democracy is that since the beginning of the present decade, violence and extermination of opponents is being resorted to as an easier mode of winning an election. The foundation of Parliamentary democracy is an 'appeal from the bullet to the ballot'.

The new generation of young voters.

Amidst this abysmal gloom, a ray of hope has been flashed by the fact that by the 61st Amendment Act 1988,—amending Art. 326,—the voting age has been lowered from 21 to 18 years, as a result of which younger blood has been infused into the electorate of India, since the 1989—General Election. The result has been that it would no longer lie in the mouth of the elders to keep students away from politics. What the students have so long been doing surreptitiously in the educational institutions, they will now do it as a matter of right. Now, therefore, it will be a concern of every young man to be apprised of the objectives of each of the political parties and to decide which way he himself would be inclined. All this means degeneration of academic education, no doubt, but it will bring forth a new generation of students who would realise that they are not tools in the political machinery, to be wielded by political leaders to serve their selfish ends,—but the very foundation of Parliamentary democracy in India.

Of course, mere lowering of the voting age will not give a young man an opportunity to enter into the administration at once, so long as the qualifying age of membership of the Legislature is not lowered down from 25 years for the House of the People or the Legislative Assembly of a State. The period between 18 and 25 is the brewing time given to the younger generation to equip themselves for taking up the reins of government from professional politicians who have repeatedly proved their failure. Time has come for them to realise that they cannot reach their objective by political slogans or breaking their heads on the streets, but by acquiring political education and encyclopaedic knowledge ranging from nuclear science to agriculture and the mass of laws by which this vast country is governed,—so that they can usher in an age of efficient administration, if and when they come to power.

At an election held in the U.K. or the U.S.A., hardly a life is lost in the election campaign, during which opposing contestants address newsmen and the voters from the same platform,—presenting alternative programme

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to solve the same national problems, from which the electorate can make their choice for a new Government.

In India, on the other hand, it has become commonplace that when a political leader is determined to win an election at any cost he has to use younger people as tools in his election campaign of bloodshed. It is young people who either kill or are killed. At the General Election of Parliament held in November 1989, over 100 lives were lost in the election clashes and a similar figure is to be attributed to the State Assembly election in several States which took place in February, 1990. At the election for the 10th Lok Sabha held in 1991 the death toll has exceeded 289 (Present position is not available). Side by side was the open declaration of a Chief Minister that, whatever might be the result of a Poll, the issue of a certificate of the Returning Officer was under his control. This cannot be brushed aside as a hyperbole because it was attended with unlawful practices which led to unprecedented intervention by the Election Commission in some such States.

This is not Parliamentary democracy, but its death-knell. It will be a glorious failure of democracy in India if the younger generation does not cry a halt to this scheme of massacre. It is for them to rise as a man to protest against the nefarious mandates of the heads of various political parties.

Every Indian must look forward, to build up an India which will stand as a man against whatever calamity befalls our lot. The responsibility therefore lies on the younger generation to build up a united and stronger India, where each man will play the role of a poet, philosopher, warrior, and administrator, rolled in one, in the cause of the Motherland,—which stands paramount to the narrower interests of his family, community or political affiliation.

Before concluding, I should mention certain glaring events which have changed the background in the history of constitutional development in India.

So long there was one major Political Party, namely the Congress, while there were a number of groups or factions, composed of dissidents, apart from the Leftists Parties who held views radically different from the rest. The decline of Communism in Europe, including the U.S.S.R. itself, has made it impossible for the Leftist to present an alternative government at the Union level. Instead has emerged the Bharatiya Janata Party (known as the B.J.P.), as an effective Opposition Party, with evident potentiality.

Controversy as to the true meaning of 'secularism'.

It seems that at future elections, the issue will be as to the meaning of 'Secularism' in the Indian Constitution. The case of the B.J.P. is that secularism means equal treatment of all the religions and not a favourable treatment (extra-constitutional) of the minority, or rather, the Muslims (who constitute the major group amongst the minorities), in order to secure their votes, which is decisive because the majority, that is the Hindus, are divided into numerous Political Parties. According to the B.J.P., what the Ruling Parties have been doing so long is to pamper "Muslim sentiments", for which there is no provision in the Constitution over and above the safeguards embodied in Arts. 29, 30, and the like. The

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Constitution, on the other hand, promises equality of every individual, irrespective of religion [Arts. 15 and 16].⁷¹

In the 1996 Lok Sabha Election, although B.J.P. got the highest number of seats, it could not attain absolute majority. It seems that at the next General elections the political parties would be compelled to fight the elections being divided mainly into two camps—(a) B.J.P. and (b) non-B.J.P. This did actually happen in 1996, but in a different manner—the anti-B.J.P. Parties united against the B.J.P., but without surrendering their separate entities. The result was formation of Coalition Governments formed by 13 minority parties, headed by Mr. H.D. Deve Gowda and later on by Mr. I.K. Gujral, which tottered ever since their formation and collapsed within a year of their formation. In 1998 Parliamentary elections, the B.J.P. emerged as a single largest party

and again a coalition Government was formed headed by Mr. Atal Bihari Bajpayee with a political uncertainty to complete its full term.

Unstable government and rule by a Party lacking majority.

Both at the elections held in 1989 and 1991 (for the 9th and 10th Lok Sabhas, respectively), the largest single Party has failed to secure an absolute majority; yet, in order to avoid another election, it was allowed to form a government with the tacit support of some other Parties who, however, refused to enter into a coalition government and share the responsibilities of the Party in power. The result has been the successive fall of a minority government as soon as the supporting Party withdraws its support on some issue on which it has taken a contrary stand. This has happened to the governments headed by Mr. V.P. Singh and Chandra Shekhar.

On the other hand, a Muslim religious leader has urged the Muslims to thwart both the Congress(I) and BJ.P. by voting against both and forming a Government, if possible, by uniting with other divisive forces such as those who preach class hatred on the basis of casteism or poverty. The action of the Muslim religious leader is only the other side of the coin to mix up politics with religion; but it will require another Supreme Court decision to put it down for the sake of maintaining the unity and integrity of the Indian Nation.

Resort to Presidential system, no solution.

Some people think that since we have failed in the game of parliamentary democracy, we should now try our hand at the Presidential form of Government. Without going into the merits and demerits of the two systems, a jurist should point out that this will not be possible because an amendment of the Constitution, which will be necessary for the purpose, will not be tolerated by the Supreme Court so long as the thirteen-Judge dogma that the Parliamentary system of Government is a 'basic feature' of our Constitution⁷² is not turned down by a larger Bench,—which would be another Herculean task.

We have, therefore, to remain contended with the Parliamentary system.

Apart from this, unless corruption is rooted out from the grass roots, a change over to the Presidential system will merely result in the installation of

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irresponsibility and autocracy; wherefrom shall we get a 'clean' President and a nationally inspired electorate to keep him under control?

A cool thinking of all the foregoing considerations will enable us to realise that in order to save our democracy, each one of us should make a sincere and concerted effort to root out dishonesty and corruption, withdraw all support from 'political murders' and communal riots and should love our country as we love our mother. This can be achieved if only we realise the true tenets of our respective religions, for no religion teaches otherwise.

REFERENCES

1. A critical survey of the 42nd and 44th Amendments are to be found in Author's Constitutional Law of India (Prentice-Hall of India, 4th Ed., 1985), pp. xxxix to lvi; and Constitution Amendment Acts.
2. Subsequent to the publication of this suggestion at p. 361 of the eleventh edition, Government of India had appointed the Sarkaria Commission, under pressure of political circumstances. The scope of this Commission, however, was a review of the Centre-State relations, i.e., the federal provisions and not a comprehensive revision of the Constitution as suggested by this Author. Ere long, this shall have to be undertaken.
3. See Author's Commentary on the Constitution of India (6th Ed., Vol. F, pp. 248-50).
4. Keshavananda v. State of Kerala, A. 1973 S.C. 1461. The process of supplanting the Fundamental Rights by the Directive Principles, however, received a set-back at the hands of a 4:1 decision of a Constitution Bench of the Supreme Court in the much-debated case of the Minerva Mills v. Union of India, A. 1980 S.C. 1789 (paras 60, 70, 80), as a result of which the extension of the protection of Art. 31C to legislation to implement "all or any" of the Directives in Part IV, made by the 42nd Amendment of 1976, was held to be void on the ground that it disturbed the basic structure of the Constitution which rested on a balance between the Fundamental Rights and the Directives, by excluding judicial review altogether in respect of such laws. The result of this decision was that a legislation to implement only the Directive under Art. 39(b)-(c) would receive the protection of Art. 31C, as prior to 1976.

While the Indira Government had been seeking to get the decision in the Minerva Mills case overruled, another Division Bench [in Sanjeev Coke Co. v. Bharat Coking, A. 1983 S.C. 239 (para 13)] came to the rescue of the Government in an indirect way, by indicting the view taken by 4 of the Judges of the Supreme Court [CHINNAPPA REDDY, VENKATARAMAIAH, BAHARUL ISLAM AND BHAGWATI, JJ. (who had dissented in the Minerva Mills case)]. In the opinion of these 4 judges, the decision in the Minerva Mills case as regards Art. 31C was obiter, i.e., uncalled for by the pleadings in the case. Of course, for an effective effacement of the Minerva Mills decision, the Government shall have to await the result of the review petition that is pending for several years.

5. India, 1984, pp. 231ff.
6. CHANDA, Federal Finance, pp. 279, et seq.
7. Ibid., p. 186.
8. Statesman, 18-7-1967, p. 1.
9. See, for instance, Atiabari Tea Co. v. States of Assam, (1961) 1 S.C.R. 809 (860); Automobile Transport v. State of Rajasthan, A. 1962 S.C. 1406 (1416); Kadar v. State of Kerala, A. 1974 S.C. 2272.

10. Cf. State of West Bengal v. Union of India, A. 1963 S.C. 1241 (vide Author's Comparative Federalism, Prentice-Hall of India (1987), pp. 167ff).

11. It would have been impossible to achieve this strength over-night if the unitary elements in the Constitution had not been utilised by the Union in times of peace to make the country understand that strength lay in greater cohesion and unity. The Author is therefore unable to agree that "the most surprising thing about Indian politics during the last ten years is that, while keeping intact the formal legal relations, the distribution of functions, powers and finances between the Union and the States has been altered to an extent that was not at all contemplated by the Constituent Assembly" (Santhanam, Union-State Relations, 1960, vii).

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12. Bangladesh itself has raised an unexpected problem for India, having turned into an Islamic Republic in the lap of the Islamic States of the world and aspiring for a 'confederation' with Pakistan.

13. Statesman, 11-5-1983; 21-6-1983, p. 8.

14. An elaborate treatment of this topic is to be found in Author's Constitutional Aspects of Sikh Separatism (Prentice-Hall of India, 1985). [Reference in the following footnotes is to pages of this booklet].

15. Many Opposition Parties joined with the Akalis to form the "Opposition Conclave" (p. 6, ibid.).

16. A resolution adopted by the Akalis at the Anandpur Gurudwara on October 16, 1973 and ratified by the All India Akali Sammelan in October, 1978, at Ludhiana Wide pp 2ff, ibid.].

17. Raising a volunteer force of 1 lakh at the first instance [Statesman, 14-3-1983] and a 'suicide squad' [pp. 15-16, ibid.].

18. It is not correct to say that the agitation for 'Khalistan' is the work of a group of terrorists. The steps in which it has advanced from Akali organisations cannot be overlooked; 54th All-India Educational Conference of the Chief Khalsa Dewan—asserting that the Sikhs were a separate Nation and should also be admitted to the U.N. as a member— 'Khalistan' [18-3-1981]; Reiterated by the Shiromani Gurudwara Prabandhak Committee [Times of India, 30-8-1981]; Anandpur Sahib Resolution; as presented by the Akali Dal (Talwandi) at the World Sikh Convention [April, 1981],—asserting that the Sikhs are a separate Nation and that this status of the Sikh Nation has been recognised by the major Powers of the World; letter written by the Akali Leader Bhindrawale to Jagjit Singh, the 'Khalistan' leader in London [Statesman, 6-1-1983]; Sant Longowal's thesis that Sikhs are a 'separate race' [Statesman, 16-6-1983]; harbouring extremist leaders and criminals [Statesman, 206-1983, p. 7; ibid., pp. 1, 15-18].

19. Ananda Bazar Patrika, 18-5-1985.

20. Statesman, 25-7-1985.

21. Cf. Statesman, 15-4-1987. [The Chief Minister thinks that it may be abated by the Government of India releasing the army deserters and mutineers who are detained in the

Jodhpur Jail, as demanded by the AISSF (Statesman, 14-3-1987). It is impossible for any Government to give a blanket amnesty to mutineers if mutiny in place of discipline is to be prevented from being the order of the day, in the ranks of those who are entrusted with the defence of the State. To meet the demand halfway, Government of India has announced its decision to review the cases of these detainees individually. It does not appear, however, that anybody has given the assurance that the released mutineers or deserters will not swell the ranks of terrorists.]

22. The present agitation, in fact, is not a new movement, but is a logical sequel of the 'Bangal Khedao' movement which started as a language drive, some three decades ago. It would be an eye-opener to many people in other parts of India, that one group of the agitators calls its movement as 'the 18th war of independence', to carve out a separate homeland for the Assamese who belong to the Mongolian stock, with a separate flag [Time, 7-3-1983].

23. Good sense has prevailed with the agitators to realise this [Statesman, 23-3-1983, p. 1]. But though the Tribunals set up for this purpose [Statesman, 7-6-1983] has done substantial work by May, 1987, there has been a stalemate in finalising the decisions of the Tribunal owing to a controversy on principles.

24. On 16-8-1985, the Government signed an agreement with Assam leaders as a result of which elections were conducted, leading to the Assam Gana Parishad taking up administration of the State. Subsequently the ULFA (United Liberation Front of Assam) started a reign of terror by murdering non-Assamese and extorting money from them. It reached a point where people left as if there was no government in Assam-Consequently, President's Rule was declared on 28-11-1990, after dismissing the Assam Gana Parishad Government headed by Mahanta owing to its failure to combat terrorism-

An election was held in 1992 leading to a Congress (I) Government under Hiteswar Saikia as the Chief Minister. He is still struggling against the ULFA and Bodo militants.

25. Statesman, 18-7-1986.

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26. Critics say that the illegal immigrants have been entertained by the Parties in power by granting them Ration Cards and eventually entering their names in the Electoral Roll [cf. Ali v. E.R.O., A. 1965 Cal. 1 (paras 1, 6)], in order to gain their votes.

27. Statesman, 13-2-1991; Anandabazar, 15-2-1991.

28. If they succeed in this plan, they will simply fulfil their pledge to 'recover Hindusthan by a joke' (larke lia Pakistan, larke lenge Hindusthan), which was their slogan at the time of the Referendum held in 1947 in Sylhet.

29. Anandabazar, 8-8-1992; Statesman, 15-2-1991; 2-8-1991.

30. The secessionist nature of the Gorkhaland agitation is veiled and equivocal and not so patent as in the case of that for Khalistan, and that is why the Government of India was initially misled to assume that the Gorkhaland agitation was not anti-national, until the Government of West Bengal came out with a well-documented White Paper (in two Parts) which gives written evidence of what the GNLF (Gorkha National Liberation Front) means, according to its 'President' Ghising.

The Gorkhaland agitation relates to the West Bengal District of Darjeeling where a large number of Nepalis reside as immigrants (for work), under a reciprocal treaty of friendship between India and Nepal of 1950. The GNLF claim that Darjeeling was a part of Nepal and came to the British Government by way of cession from Nepal is, however, not correct because the territory of Darjeeling belonged to Sikkim and Bhutan and the British acquired the territory by grant, agreement or annexation of which the other party was not Nepal but Sikkim or Bhutan, during the 19th Century. Nepal entered into the 1950 Agreement with India, because the immigrants to Darjeeling were people of Nepali origin [Gorkhas] whereas many Indians were similarly residing in Nepal, so that 'reciprocal rights and privileges' were to interest to both Nepal and India.

The agitation for Gorkhaland took a concrete shape by the submission of a Memorandum by the GNLF leader to the King of Nepal on December 23, 1983 (Appendix A to the W.P., Part I). This contained clearly a demand for creating a separate State for the Gorkhas in the territory of Darjeeling, which the Memorandum claimed to be a ceded territory of Nepal. The appeal was to the King of Nepal to revoke all treaties and agreements which might stand in the way of severing Gorkhaland from India. It also spoke of the 'right of self-determination' of the Gorkhas and copies of this Memorandum were simultaneously sent to the heads of foreign States, such as the U.S.A., France, Pakistan, Britain, the United Nations besides India. There was not a word in this Memorandum as to Gorkhaland being created as a separate State within the Union of India. The birth of the Gorkhaland movement was thus clearly for secession from India.

As Appendix B to the W.P. (Part I) shows, on June 2, 1985, the GNLF leader made a speech wherein he admitted that the Government of Nepal or the U.N. had not responded to his claim for a separate sovereign State. This speech was, in fact, made after the Government of India, realising its initial blunder, told the GNLF leader that there would be no talk with him until he gave up his claim for a sovereign State outside India. In para 2 of this speech, therefore, the leader says that 'we do not want to get separated from India . . . but have demanded . . . separate State within Indian Union'. Curiously, however, in the succeeding paragraphs, he reiterated his story that Darjeeling came to the British by way of cession from Nepal, and in the concluding paragraph he clearly urged for a 'separate sovereign' State, just as other small countries had been recognised as separate States by the U.N.

The Author had, in a previous edition suggested that if the Government of India does not create a separate State it would have to offer regional autonomy after its terms were settled by a tripartite talk between India, West Bengal and Gorkha leaders. This has come to be true. In July, 1988, an agreement was signed creating a Darjeeling Gorkha Hill Council, followed by election in pursuance thereof, and Subhas Ghising has been elected Chairman of the Council.

It is high time that the Union Government pays adequate attention to other separate movements which appear nascent for the time being, such as the Jharkhand' movement of tribals in West Bengal, Bihar and adjoining areas; the demand for 'Udayachal' by the tribals of the north-eastern regions; for Nagaland for 'Christ' [Statesman, 12-6-1983], or the demand for 'Greater Mizoram' [Statesman, 23-8-1986], and so on.

31. By the Constitution (71st Amendment) Act, 1992 [see Table XX, pott].

32. Yugantar, 8-4-1990.

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33. See the recommendations made by the Report of the 'Centre-State Relations Inquiry Committee' of Madras (1971), pp. 216-17. In order to counteract the formation of the Southern Council of the Chief Ministers of Tamil Nadu, Andhra Pradesh, Karnataka and Pondicherry, the Central Government set up the Sarkaria Commission to review Centre-State relations [Statesman, 24, 25-3-1983]. All nationalists should long after an amicable solution of the problem without impairing the strength of the Union.

34. Cf. *In re Sea Customs Act*, A. 1963 S.C. 1760 (para 62); Author's Comparative Federalism (Prentice-Hall of India, 1986); p. 628.

35. Cf. Reference under Art. 143, A. 1965 S.C. 745.

36. The Author is tempted to reproduce what he said in this context more than two decades ago: "Fragmental changes... cannot achieve the purpose where the change in the public opinion is so rapid as in India today. In fact, each step ahead in material or social advancement is enlarging the mental horizon as well as the demands of the masses. If this is to be met halfway, by way of averting anything like a revolution, an overall rethinking is necessary. . ." [Author's Tagore Law Lectures on Limited Government and Judicial Review, pp. 13-14].

37. *State of Rajasthan v. Union of India*, A. 1977 S.C. 1361 (1413) C.B.; *Minerva Mills v. U.O.I.*, A. 1980 S.C. 1789 (paras 21, 26, 93-94, 104) C.B.; *Kihota v. Zachilhu*, A. 1993 S.C. 412 (paras 18, 46, 104) C.B.; *Bommai v. U.O.I.*, A. 1994 S.C. 1918 (para 30)—9 Judges; *Kaulv. U.O.I.*, (1995) 4 S.C.C. 73 (para 12).

38. *State of Karnataka v. Appa*, (1995) 4 S.C.C. 469.

39. *Ravkhandran v. Bhattacharjee*, (1995) 5 S.C.C. 457.

40. Bandhua v. U.O.I., A. 1984 S.C. 802 (para 10); State of H.P. v. H.P.S.R.C, (1995) 4 S.C.C. 507 (para 17); State of Maharashtra v. Manubhai, (1995) 5 S.C.C. 730; Vishal v. U.O.I., A. 1990 S.C. 1412 (paras 8, 14); Indra v. U.O.I., (1990) Supp. (3) S.C.C. 217 (paras 22-28)-9 Judges.

41. This hoax has already raised its head under the Deve Gowda Coalition Ministry, in 1996.

42. A recent example of this is a direction by the Supreme Court for creation of an All-India Judicial Service. The Constitution (Art. 312) lays down that for creation of an All-India Service, Rajya Sabha must pass a resolution with the support of two-thirds of the members present and then Parliament may provide for it by enacting a law. A directive by the Court cannot supplant a clear constitutional provision. Similarly to state that 'consultation' means 'concurrence' is also stretching the language to a breaking point and is nothing but amending the Constitution under the colour of interpretation [Supreme Court Advocates v. Union of India, (1993) 4 S.C.C. 441 and Special Reference No. 1 of 1998, Re:, (1998) 7 S.C.C. 739 (9-Judge Bench)].

43. DALWAI, Muslin Politics in Secular India, (1972), quoted in the Author's Commentary on the Constitution of India, 6th Ed., Vol. D, pp. 220-21. The modus operandi of all such disruptive forces is to advance step by step: at first a feeler is sent into the air and after it receives circulation and the initial shock is absorbed. The meek demands are crystallised and further extended, taking advantage of the fact that non-Muslim political parties vie with each other in conceding such demands, in whole or in part, in order to secure Muslim votes. That was how Pakistan was built up. The same history is being repeated. Thus, while originally the demand was for communal representation in the Government Services, the Indian Muslim League has since 1979 extended the demand to such representation in the Public Sector Undertakings and technical establishments, the army and the police. Similarly, the demand for aid for the promotion of Urdu has come to be a demand that Urdu should be recognised as an Official Language under Art. 347 of the Constitution even in those States where the Urdu-speaking people do not form a substantial proportion of the population of the State concerned, such as West Bengal. The paradox of the situation is that while in Bangladesh, the Muslims themselves are fighting for the propagation of the Bengali language (in place of Urdu which the Pakistani military regime sought to inject into the Bengali-speaking population) the Muslims of West Bengal whose mother-tongue is Bengali are making a frantic effort to speak in Urdu in the public conveyances, market places and the like, and also to represent at the time of census that their mother-tongue is Urdu. The next step is to demand that the Government Offices in West Bengal must have Urdu typewriters and typists, even though there may not be any official paper in Urdu to be typed. One has to rub his eyes to find that since March, 1985, this Urdu separatism has led to the demand that the Urdu speaking non-Bengali industrial

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areas of West Bengal should be given the status of 'Urdustan' [Ananda Bazar Patrika, 28-8-1985; Jugantar, 29-3-1985; 64-1985].

Those who have learnt a lesson from the Partition in India can hardly shut their eyes to what has happened in Kerala. During the United Front Ministry (1967-69), a separate Muslim majority district was formed, named Malappuram. In 1983, the United Democratic Front Government, led

by Congress(I) has conceded the demand for the formation of a second Muslim majority district with Kasargod as its headquarters [Statesman, dt. 27-2-1983]. No less alarming is the utterance of a responsible Government dignitary that already there are pockets at places in West Bengal, like Asansol, Murshidabad, where Urdu-speaking Muslims form a majority. A student of Constitutional Law can only point out that the Supreme Court has held that the question of minorities has to be determined with reference to the population of the entire State [In re Kerala Education Bill, A. 1958 S.C. 956 (para 21)]. To say that the Muslims residing in a particular pocket constitute the majority is to majorise them within the pocket, while they continue to derive minority safeguards and benefits available to every Muslim in the State as a whole. To make light of this ominous trend is to pave the way for the next demand for the formation of a second Pakistan in such Muslim pockets in Kerala, West Bengal and other States.

Anybody who assumes that to meet ever-aggressive demands of a religious minority is to foster 'secularism' should note that it would be the highest form of communalism to support one religion as against the majority who are to lead in a Parliamentary form of Government.

44. The Niyogi Commission (headed by a retired Chief Justice of the Nagpur High Court) quoted in Author's article in the Truth, Calcutta (Vol. 47, no. 8, 8-6-1979, at p. 115 (para 4), observed: "At the root of these activities is their ambition to carve out a separate Christian State for themselves on the strength of their numbers". Vide also Chief Minister, Tripura's statement in Ananda Bazar Patrika, dt. 6-8-1984.

45. All-Indian Muslim Conference at Lucknow [Statesman, 29-12-1978; 11-12-1979]; See also Muslim League's demand in Kerala [Statesman, 27-2-1983].

46. Nain Sukh v. State of U.P., A. 1953 S.C. 384 {385}; State of Madras v. Champakam, (1951) S.C.R. 525 (530, 533); Trilokiv. State of J. & K., A. 1969 S.C. 1.

47. On this point, it is worthwhile to reproduce the illuminating words of AHMADI, J., as he then was, in the 9Judge case of Bommai v. Union of India, A. 1994 S.C. 1918—

"The experience of partition of the country and its aftermath had taught lessons which were too fresh to be forgotten by our Constitution-makers. It was perhaps for that reason that our founding fathers thought a strong centre was essential to ward off separatist tendencies and consolidate the unity and integrity of the country" (para 21).

"The British policy of divide and rule, aggravated by separate electorates based on religion, had added a new dimension of mixing religion with politics which had to be countered. . . ." (para 24).

"Since it was felt that separate electorates for minorities were responsible for communal and separatist tendencies, the Advisory Committee resolved that the system of reservation for minorities, excluding S.C./S.T., should be done away with . . ." (para 26).

See also Poudyal v. U.O.I., A. 1993 S.C. 1804 (paras 30-33).

48. Statesman, 30-11-1979 (Zakir Hussain Memorial Lecture).
49. It should be noted that so far as the linguistic interests of Minorities are concerned there is already a provision for the appointment of a Special Officer for linguistic minorities, in Art. 350B.
50. Parliament has enacted on 17 May, 1992, the National Commission for Minorities Act, 1992 for constituting a statutory Commission. The Act defines "minority" as a community notified as such by the Central Government.

The functions assigned to the National Commission for Minorities are to (see s. 9)—

- (a) evaluate the progress of the development of minorities under the Union and States;
- (b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
- (c) make recommendations for the effective implementation of the safeguards for the protection of the interests of minorities by the Central Government or the State Governments;

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- (d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
- (e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;
- (f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- (g) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
- (h) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and
- (i) any other matter which may be referred to it by the Central Government.

For the full text of this Act, see App. I to the Author's Human Rights in Constitutional Law.

51. The Jamialulama-i-Hind goes to the extent of urging for the deletion of Art 44 [Statesman, dt 2-10-1979, p. 3] or to exempt Muslims from its operation [Statesman, 8-4-1985].

52. This view has been supported by many Muslim Judges and scholars who possess special knowledge about the Shariat [see Author's Commentary on the Constitution of India, 6th (Silver Jubilee) Ed., Vol. D, pp. 222-23].

53. If Government yields to this demand of the Muslim now, could it resist a similar demand of the Christians and the nascent demand of the Akali leader that there should be a separate code of personal laws for the Sikhs [Statesman, 16-6-1983]. For similar demand for Christian converts; which has been turned down by the Supreme Court, see Soosai v. Union of India, A. 1986 S.C. 733 (para 8).

54. Ananda Bazar Patrika, dt. 5-2-1982.

55. A Muslim divorced wife brought an application for maintenance under s. 125 of the Criminal Procedure Code, which was decreed. The husband appealed to the Supreme Court on the ground that s. 125 should not apply to Muslims as it is contrary to Muslim Personal law. The Supreme Court rejected this contention upon the interpretation of s. 125, namely, that it applied to all 'persons', irrespective of their religion or personal law, and dismissed the husband's appeal.

In the judgment [Ahmed v. Shah Bano, A. 1985 S.C. 945 (para 32)], the Supreme Court observed that it was a pity that the State had not made any attempt to make a common Civil Code even though Art. 44 issued a clear mandate on the State in this behalf,—whether the lead came from the Muslim community or not:

"A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies . . . It is the State which is charged with the duty of securing a uniform Civil Code for the citizens of the country . . .".

The Supreme Court repeated its views on Art. 44 in Jorden v. Chopra, A. 1985 S.C. 935 (para 1).

As a learned Professor of the Bombay University, Prof. Siddiqui, observed, if the State took the lead, ultimately the Muslim community would accept it because it was in accord with the notions of modern civilised society;

"The issue should not be decided in terms of textual conformity with the Koran but in the context of modern civilised society. And then even if the law goes against the Koran, the Government must enact it. Ultimately, the community will accept it" [Sunday Observer, 6-5-1984].

Overriding the clear observations of the Supreme Court and rejecting the protests of a large section of the Muslim community, including learned scholars, however, the Congress(I) Government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1966, providing that the statutory provisions contained in this Act should govern, unless the divorced woman and her former husband apply to the Court that they would prefer to be governed by the provisions of s. 125, Cr. P.C., as to the right of maintenance of the divorced wife.

The Congress (I) Government thus, gave way to the Muslim fundamentalists to violate the Supreme Court decisions as well as the Constitution, which enjoined the State to make a common Civil Code, overriding any personal law to the contrary. It is more

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surprising that the National Front Government's Law Minister has dittoed, declaring that there would be no common Civil Code unless the Muslim community wanted it.

56. Ahmed v. Shah Bano, A. 1985 S.C. 945.

57. Jugantar, dt. 23-12-1989. [On 12-6-1996, ex-P.M. Narasimha Rao forcefully presented before Parliament the Congress case against Uniform Civil Code. The Coalition Government of Gowda seems to adhere to this view (see Author's Uniform Civil Code in India, 2nd Ed., p. 42).]

58. The claim of the Buddhist converts, resurrected during the 1980 election, clearly confronts the unanimous decision of the highest tribunal in Punjabrao v. Meshram, A. 1965 S.C. 1179, followed by Ramalingam v. Abraham, (1969) 1 S.C.C. 24; Soosai v. India, A. 1986 S.C. 733 (para 8).

Notwithstanding these decisions of the highest tribunal of the land and the irrefutable grounds stated at pp. 399-400, the National Front Government has enacted the Constitution (Scheduled Castes) Orders [Amendment] Act, 1990 (Act 15 of 1990) extending the Scheduled Caste privileges to the Buddhist converts from Hinduism.

59. Indra Sawhney v. Union of India, (1992) Supp. (3) S.C.C. 217 (paras 399, 782). Noble laureate Mother Teresa participated in a demonstration at Delhi on 18-11-1995 demanding reservation for scheduled caste Christians.

60. Prime Minister Rao failed to achieve it through an ordinance. His successor Gowda intends to have it through a Bill.

61. This statement of the Author has been criticised as an 'ipse dixit' by Mr. Noorani [Statesman, 27-6-1995]. Mr. Noorani has not repelled any of the reasons given by this Author at pp. 400ff. of the 16th Ed. of the 'Introduction', viz.—(i) In the international sphere, the minority problem arose when the population of a country came to be directed against their will, by external circumstances, such as war, to another country so that the divided community which became a minority in another country needed safeguards to save them from ethnic extinction. On the other hand, the Muslims obtained the Partition of India on their own demand on the footing of the 'two-Nation' theory, and even after that Partition, a section of the Muslim community preferred to remain in India out of their own choice; nobody compelled them to remain in divided India (which was a creation of theirs).

(ii) When they opted to remain in divided India, they did not enter into any covenant with the Government of divided India. No observation of Moulana Azad can be enforced as a legal covenant in an international court.

(iii) The leaders of divided India incorporated in their Draft Constitution certain safeguards for minorities, notwithstanding the Partition, because they refused to concede on principle, that the Muslims in India constituted a separate Nation. That India constituted one Nation whose unity and integrity must be maintained was proclaimed in the very Preamble of the Draft Constitution of divided India. The Muslims who opted to remain in divided India did so with their eyes open to this Preamble and the safeguards for minorities included in that Draft.

These have ultimately been embodied in Arts. 25-30 of the Constitution as finally adopted in 1949. Hence, all the safeguards in Art. 27 of the International Covenant are already embodied in the Constitution of India, viz., the right (a) to enjoy their own culture [Arts. 29-30]; (b) to profess and practice their own religion [Art. 25(1)]; and (c) to use their own language [Art. 29(6)]. If any of these rights are infringed, any member of the minority community can legally enforce them in the national Courts under Art 32 or 226.

(iv) But the Muslims and their advocates are not contended with this. They want things beyond what is already contained in the Constitution adopted by the 'People of India' (which included the Muslims who opted to remain in India), e.g., to eliminate or scrap Art. 44 of the Constitution—which enjoins the Government of India to make a common civil code for all the people of India. The highest Tribunal of the land which is also to abide by Art. 44 (by reason of Art. 36), read with Art. 12, has been repeatedly reminding the Government of India of their duty to implement Art. 44, when half a century has elapsed since the adoption of the Constitution.

As against this, what covenant will a journalist produce before an international forum to establish the case of those who are still fostering the ghost of the 'two-Nation' theory, to disintegrate the unity of India, and to override the highest law of the land.

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On this point, I can do no better than to quote from a recent Supreme Court judgment [Mudgal v. Union of India, A. 1995 S.C. 1531 (para 35)].

"Those who preferred to remain in India after the Partition, fully knew that the Indian leaders did not believe in the two-nation or three nation theory and that in the Indian Republic there was to be only one Nation—the Indian Nation—and no community could claim to remain a separate entity on the basis of religion." [See also Bommai v. Union of India, A. 1994 S.C. 1918 (para 21)—9-Judges.]

No dogmatism of a journalist, coloured by a communal vision, can demolish the foregoing observation of the highest tribunal which is founded on patent history.

(v) It is an amazing evidence of the foresight of the Indian leaders that even though the International Covenant on Civil and Political Rights was made some two decades later, they anticipated the contents of Art 27 of the International Covenant and embodied them in the Draft Constitution. But that cannot confer on the Muslim Separatists any right to go further, against the undenied facts of Indian history [vide Poudyal v. Union of India, A. 1993 S.C. 1804 (paras 30, 51) C.B.].

62. Resolution of the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities (1950).

63. Imam Bokhari at the Babri Masjid rally [Statesman, 30-1-1987].

64. Vide 47 Truth (11-1-1980), p. 569. [See Author's Uniform Civil Code for India, Prentice-Hall of India, 2nd Ed., 1997.]

65. DALWAI, Muslim Politics in Secular India (1972), pp. 48, 50-52, 72, 76, 96.

66. It is only one step forward to condemn the Indian Constitution itself as worthy of being burnt down, for its failure to offer communal representation and like reservations in favour of the Muslims, so as to violate the Prevention of Insult to National Honour Act [see the report from Bareilly, at p. 9, col. 4 of Statesman, dt 8-11-1982].

67. Space does not permit to deal with the problem of minority in India comprehensively, in a book of this introductory nature. Those who want to study further may read the Author's Commentary on the Constitution of India (6th Ed.), Vol. D, pp. 206-09; 217-28; 232-37; 248-53.

68. Of course, in some later stanzas, the motherland is described as having hands and voices, but that is nothing but a poetic way of portraying the hands and voices of all children of the soil, to whom the poet appealed for lighting for their independence, as one man. The object is not in any way different from the patriotic songs of other lands.

69. It sounds ironical to hear that the objection to Vande Malaram, which figured in the 11-point demands of Mr. Zinnah 1938, could be resounded through the mouth of the Muslims in the 1992-Parliament, ie., 45 years after the Partition of India. Eventually, the Parliament (of Partitioned India) had to adopt a resolution (23-12-1992) that every session of Parliament shall close with the music of Vande Malaram.

70. The demand for namaz on the highway has been reciprocated by that of moha-arati on the highway [Statesman, dt. 10-2-1993], forgetting that both are equally untenable under the law [vide p. 24, C7, Vol. C/I].

71. Whatever be the merits of the arguments of the B.J.P., the Supreme Court has thrown cold water upon it by laying down in the 9-Judge Bommai Case, A. 1994 S.C. 1918 that 'Secularism' under the Constitution requires that.

72. Keshavananda v. State of Kerala, A. 1973 S.C. 1461 (13-Judges).

Tables

TABLE-I

FACTS TO START WITH

(Figures rounded up, primarily on the basis of 1991 census) India has-

an area of over 12,65,000 sq. miles (32,87,782 sq. km.) of which 10,861 sq. miles are included in the Union Territories and the rest in the States; 6,05,224 villages as against 4,689 towns; and 80 per cent of the population live in villages;

a population (in 1991) of over 84 crores or 846 million (about 16% of the world population) [According to 1998 U.N. estimate 975.8 million (vide 'The Population' Manorama Year Book 1999, p. 456)]—of whom Hindus constitute 82.41 per cent, Muslims 11.67 per cent, and other religious together 6 per cent; who speak as many as 1,652 languages of which 18 languages are spoken by over a lakh of people each and these 18 have, accordingly, been included in the Eighth Schedule of the Constitution, a per capita annual income of Rs. 13,193 (at the price level of 1997-98), a literacy of 52 per cent of the population. [In 1951, it was 18 per cent only.] Every man and woman of 18 and over is an elector for the House of the People and respective Legislative Assembly. At the fifth general election held in 1971, the number of persons on the electoral roll was 290 m., which is more than the population of the U.S.A. or the U.S.S.R. On the revision of the electoral roll, in 1986, this number rose up to 361 m.; and as a result of the lowering of the voting age to 18, in the 1989-election, the number exceeded 490 m. In the 1996 polls the number of voters was more than 590 million. General elections have been held in 1951, 1957, 1962, 1967, 1971, 1977, 1980, 1984, 1989, 1991, 1996, 1998 and 1999. [See Table XIII, post.]

India's Annual Budget for 1999-2000 is Rs. 2,83,882 crores, of which Defence includes Rs. 45,694 crores.

The Constituent Assembly had its first sitting on 9-12-1946.

The Draft Constitution of India, which was prepared by the Drafting Committee of the Constituent Assembly and presented by it to the President of the Constituent Assembly on 21-2-1948, contained 315 Articles and 8 Schedules. The Constitution of India, as adopted on 26-11-1949, contained 395 Articles and 8 Schedules. After subsequent amendments, the Constitution as it stood on 31-1-2000, contained 442 Articles and 12 Schedules.

Up to December 2000, the Constitution has been amended 83 times by Constitution Amendment Acts passed in conformity with Art. 368 of the Constitution (see Table IV).

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TABLE II STATEWISE MEMBERSHIP OF THE CONSTITUENT ASSEMBLY OF INDIA AS ON 31ST DECEMBER, 1947 PROVINCES—229

	No. of members
1. Madras	49
2. Bombay	21
3. West Bengal	19

4. United Provinces	55
5. East Punjab	12
6. Bihar	36
7. C.P. and Berar	17
8. Assam	8
9. Orissa	9
10. Delhi	1
11. Ajmer-Merwara	1
12. Coorg	1

INDIAN STATES—70

1. Alwar	1
2. Baroda	3
3. Bhopal	1
4. Bikaner	1
5. Cochin	1
6. Gwalior	4
7. Indore	1
8. Jaipur	3
9. Jodhpur	2
10. Kolhapur	1
11. Kotah	1
12. Mayurbhanj	1
13. Mysore	7
14. Patiala	2
15. Rewa	2
16. Travancore	6
17. Udaipur	2
18. Sikkim and Cooch Behar Group	1
19. Tripura, Manipur and Khasi States Group	1
20. U.P. States Group	1
21. Eastern Rajputana States Group	3
11. Central India States Group (including Bundelkhand and Malwa)	3
23. Western India States Group	4
24. Gujarat States Group	2
25. Deccan and Madras States	2

	Group	
26. Punjab States Group	3	
27. Eastern States Group I	4	
28. Eastern States Group II	3	
29. Residuary States Group	4	
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TABLE III TERRITORY OF INDIA**(A) As in the Original Constitution (1949) UNION****States in Part A**

1. Assam
2. Bihar
3. Bombay
4. Madhya Pradesh
5. Madras
6. Orissa
7. Punjab
8. The United Provinces
9. West Bengal

States in Part B

1. Hyderabad
2. Jammu and Kashmir
3. Madhya Bharat
4. Mysore
5. Patiala and East Punjab

Slates in Part C

1. Ajmer
2. Bhopal
3. Bilaspur
4. Cooch-Behar
5. Coorg

Territories in Part D

1. The Andaman and Nicobar Islands
2. Acquired Territories (if any)

(B) After Seventh Amendment, 1956 up to end of 2000 UNION

States1

1. Andhra Pradesh
2. Assam
3. Bihar
4. Gujarat1
5. Kerala
6. Madhya Pradesh
7. Tamil Nadu3
8. Maharashtra2
9. Karnataka'
10. Orissa
11. Punjab
12. Rajasthan

13. Uttar Pradesh
 14. West Bengal
 15. Jammu and Kashmir
 16. Nagaland5
 17. Haryana6
 18. Himachal Pradesh7
 19. Manipur8
 20. Tripura8
 21. Meghalaya8
 22. Sikkim9
 23. Mizoram15
 24. Arunachal Pradesh15
 25. Goa16
 26. Chhattisgarh18
 27. Uttaranchal19
 28. Jharkhand20
- Union Territories15
1. Delhi17
 2. The Andaman and Nicobar Islands
 3. Lakshadweep10
 4. Dadra and Nagar Haveli11
 5. Daman and Diu12-16
 6. Pondicherry13

7. Chandigarh14

Other territories as may be acquired

1. The capital cities are: Andaman and Nicobar Islands—Port Blair; Andhra Pradesh—Hyderabad; Arunachal Pradesh—Itanagar, Assam—Dispur; Bihar—

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Patna; Chandigarh—Chandigarh; Chhattisgarh—Raipur; Dadra and Nagar Haveli—Silvassa; Daman and Diu—Daman; Delhi—Delhi; Goa—Panaji; Gujarat—Gandhinagar; Haryana—Chandigarh; Himachal Pradesh—Simla; Jammu and Kashmir—Srinagarjharkhand—Ranchi; Kamataka—Bangalore; Kerala—Trivandrum; Lakshadweep—Kavaratti; Madhya Pradesh—Bhopal; Maharashtra—Mumbai; Manipur—Imphal; Meghalaya—Shillong; Mizoram—Aizwal; Nagaland—Kohima; Orissa—Bhubaneswar; Pondicherry—Pondicherry; Punjab—Chandigarh; Rajasthan—Jaipur; Sikkim—Gangtok; Tamil Nadu—Madras; Tripura—Agartala; Uttar Pradesh—Lucknow; Uttarakhand—Dehra Dun; West Bengal—Calcutta.

2. Substituted for Bombay by the Bombay Reorganisation Act (11 of 1960).
3. The name of 'Madras' changed to 'Tamil Nadu' by the Madras State (Alteration of Name) Act, 1968.
4. Mysore changed its name to 'Kamataka' under the Mysore State (Alteration of Name) Act, 1973.
5. Inserted by the State of Nagaland Act, 1962.
6. Inserted by the Punjab Reorganisation Act, 1966.
7. Inserted by the State of Himachal Pradesh Act, 1970.
8. Manipur, Tripura and Meghalaya were added by the N.E. Areas (Reorganisation) Act, 1971.
9. Sikkim was added by the Constitution (36th Amendment) Act, 1975.
10. The Laccadive, Minicoy and Amindivi Islands were renamed 'Lakshadweep', by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973.
11. Inserted by the Constitution (10th Amendment) Act, 1961.
12. Inserted by the Constitution (12th Amendment) Act, 1962 and amended by Act 18 of 1987.
13. Inserted by the Constitution (14th Amendment) Act, 1963.
14. Inserted by the Constitution (12th Amendment) Act, 1962, with effect from 20-12-1961.

15. Mizoram was elevated to the status of a State—by the State of Mizoram Act, 1986, w.e.f. 14-8-1986; and Arunachal Pradesh has similarly been elevated from the status of Union Territory to statehood, by the State of Arunachal Pradesh Act, 1986.

16. Goa was made a State by the Goa, Daman and Diu Reorganisation Act, 1987.

17. Delhi, which was no. 1 in the list of Union Territories in Part II of Sch. I of the Constitution, has been called the 'National Capital Territory of Delhi' by the Constitution (69th Amendment) Act, 1991, by inserting Art. 239AA-239AB in the Constitution, w.e.f. 1-2-1992. Though it is still retained in the category of a Union Territory, it has been given a special status—having a Legislative Assembly and a Council of Ministers to advise the Lieutenant Governor (similar to that in a State), but the Legislative Assembly shall have no power to make laws with regard to Public Order, Police and Land, though they are specified in Entries 1, 2 and 18 of List II of 7th Sch. The legislative power relating to those subjects shall belong to the Union Parliament.

18. Added by The Madhya Pradesh Reorganisation Act, 2000, s. 5 (w.e.f. 1-11-2000).

19. Added by The Uttar Pradesh Reorganisation Act, 2000, s. 5 (w.e.f. 9-11-2000).

20. Added by The Bihar Reorganisation Act, 2000, s. 5 (w.e.f. 15-11-2000).

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TABLE IV THE CONSTITUTION AMENDMENT ACTS

Sl. No	Act	Date of assent by President	Date of commencemen t	Whether ratified by more than half of State Legislatures, as required by the Proviso to Art. 368	Amendment made
1.	The Constitution (First Amendment) Act, 1951	18-6- 1951	18-6-1951	(retrospectiv e in Part)	Articles amended—15, 19, 85, 87, 174 176, 341, 342, 376. Articles inserted—31 A, 31B
2.	The Constitution (Second Amendment) Act, 1952	1-5-1953	1-5-1953	Since the Amendment Bill sought to make a change in the representatio n of States in Parliament,	Schedule added—Ninth. Article amended—81.

				it had to be referred to the Legislatures of the States in Parts A and B for their ratification. The Bill was accordingly passed in Parliament on 19-12-1952, and then referred to the States. On receiving the ratification of not less than one-half of the State Legislatures, the President gave his assent on 1-5-1953.	
3.	The Constitution (Third Amendment) Act, 1954	22-2-1955	22-2-1955	The Bill was passed by Parliament on 28-9-1954. Since the Bill sought to amend a List of the Seventh Schedule, it required ratification by the Legislatures of not less than one-half of the States	Schedule amended-Seventh Schedule—List III, Entry 33.

Sl.	Act	Date of	Date of	Whether	Amendment made
				specified in Parts A and B of the First Schedule. After having received such ratification, the President gave his assent on 22-2-1955.	
4.	The Constitution (Fourth Amendment) Act, 1955	27-4-1955	27-4-1955		Articles amended—31, 31A, 305.
5.	The Constitution (Fifth Amendment) Act, 1955	24-12-1955	24-12-1955		Schedule amended—Ninth, Article amended—3.
6.	The Constitution (Sixth Amendment) Act, 1956	1-9-1956	11-9-1956 1	The Bill was passed by Parliament on 31-5-1956. It required ratification by not less than half of the State Legislatures because it sought to amend the Legislative Lists. Having received such ratification the Bill was assented to by the President on 11-9-1956.	Articles amended—269, 286. Schedule amended—Seventh Schedule—List II, Entry 54; list I, Entry 92A inserted.

No .		assent by President	commencement	ratified by more than half of State Legislatures, as required by the Proviso to Art. 368	
7.	The Constitution (Seventh Amendment) Act, 1956	19-10-1956	1-11-1956	For obvious reasons, this Bill required ratification. Hence, it was referred to the State Legislatures, having been passed by Parliament on 11-9-1956. After obtaining the required ratification, the President gave his assent	Articles amended—49, 80, 81, 82, 131, 153, 158, 168, 170, 171, 216, 217, 220, 222, 224, 230, 231, 232, 239, 240, 298, 371. Articles inserted—258, 290A, 350A, 350B, 372A, 378A. Schedules amended—First, Second, Fourth, Seventh—List I, Entries 32, 67; List II, Entries 12, 24; List ffl, Entry 40. Articles omitted—238, 242, 243, 259, 278, 306, 379-391. Schedule omitted—Second, Part B. Consequential amendments in numerous provisions.
8.	The Constitution (Eighth Amendment) Act, 1959	5-1-1960	5-1-1960	...	Article 334 amended—'20 years' substituted for '10 years'.
9.	The Constitution (Ninth Amendment) Act, 1960	28-12-1960	17-1-1961	Views of the Legislature of the State of W.B. ascertained, under Art. 3, but ratification was not required as mere territorial change was	First Schedule amended—to transfer certain territories from the States of Assam, Punjab, West Bengal and the Union Territory of Tripura to Pakistan, implementing the Indo-Pakistan agreements of different dates.

				not a matter specified in the Proviso to Art. 368.	
10.	The Constitution (Tenth Amendment) Act, 1961	16*1961	11-8-1961 (with retrospective effect)		Article 240 and First Schedule amended—to incorporate Dadra and Nagar Haveli as a Union Territory.
11.	The Constitution (Eleventh Amendment) Act, 1961	19-12-1961	19-12-1961		Articles 66(1) and 71(3)—to narrow down grounds for challenging validity of election of President or Vice-President
12.	The Constitution (Twelfth Amendment) Act, 1962	27-3-1962	20-12-1961 (retrospectively).		Article 240 and First Schedule amended— to incorporate Goa, Daman and Diu as a Union Territory.
13.	The Constitution (Thirteenth Amendment) Act, 1962	28-12-1962	1-12-1963	Yes.	Article 371A inserted—to make special provisions for the administration of the State of Nagaland.
14.	The Constitution (Fourteenth Amendment) Act, 1962	28-12-1962	28-12-1962 But ss. 3 & 5 (a) came into force on 16-8-1962 (retrospectively).	Yes.	Provided that Pondicherry, Karaikal, Mahe and Yanam, the former French territories, should be specified in the Constitution as the Union Territory of Pondicherry. Enabled the Union Territories of Himachal Pradesh; Manipur, Tripura; Goa, Daman and Diu and Pondicherry to have Legislatures and Councils of Ministers on the same pattern as in some of the Part C States before the States' reorganisation. The Act also provided that the maximum representation for Union Territories in the Lok Sabha should be raised from 20 to 25, to enable the Union Territory of Pondicherry to be represented adequately.

Sl. No	Act	Date of assent by President	Date of commencement	Whether ratified by more than half of State Legislatures, as required by the Proviso to Art. 368	Amendment made
15.	The Constitution (Fifteenth Amendment) Act, 1963	5-10-1963	5-10-1963	Yes.	Amends a number of Arts. 124, 128, 217, 222, 224, 224A, 226, 297, 311, 316, Entry 78, List I. The more important of these changes are—the raising of the age of retirement of a High Court Judge from 60 to 62; the extension of the jurisdiction of a High Court to issue writs under Art. 226 to a Government or authority situated outside its territorial jurisdiction where the cause of action arises within such jurisdiction; modifying the procedure imposed by Art. 311 upon the pleasure of the President or Governor to dismiss a civil servant
16.	The Constitution (Sixteenth Amendment) Act, 1963	5-10-1963	5-10-1963	Yes.	Amends Art. 19 to enable Parliament to make laws providing restrictions upon the freedom of expression questioning the sovereignty or integrity of the Union of India, with consequential changes in Arts. 84,173, Third Schedule.
17.	The Constitution (Seventeenth Amendment) Act, 1964	20-6-1964	20-6-1964		Amends Art. 31A (definition of 'estate' amended with retrospective effect); Entries 21—64 added to the Ninth Schedule.
18.	The Constitution (Eighteenth Amendment) Act, 1966	27-8-1966	27-8-1966		Adding Explanations to Art. 3. Provision was made for the formation of two States, Punjab and Haryana, by reorganising Punjab on linguistic basis. The

					explanation added to Art. 3 was to clarify that the Parliament has the power to create a new State or Union Territory.
19.	The Constitution (Nineteenth Amendment) Act, 1966	11-12-1966	11-12-1966		Amending Art. 324 to clarify the duties of the Election Commission.
20.	The Constitution (Twentieth Amendment) Act, 1966	22-12-1966	22-12-1966	...	Art 233A inserted to validate the appointment of District Judges.
21.	The Constitution (Twenty-first Amendment) Act, 1967	10-4-1967	10-4-1967		Includes 'Sindhi' in the List of Languages in the Eighth Schedule.
22.	The Constitution (Twenty-second Amendment) Act, 1969	25-9-1969	25-9-1969	Yes.	Inserts Arts. 244A, 371B and Cl. (1A) in Art. 275, to constitute an autonomous State within the State of Assam (Meghalaya) comprising certain areas specified in Part A of the Sixth Schedule.
23.	The Constitution (Twenty-third Amendment) Act, 1970	23-1-1970	23-1-1970	Yes.	Amending Arts. 330, 332, 333, 334 (to extend the period of reservation for Scheduled Castes and Tribes)
24.	The Constitution (Twenty-fourth Amendment) Act, 1971	5-11-1971	5-11-1971	Yes.	Inserting Cl. (4) in Art. 13; amending Art. 368. The object of the amendment was to clarify that the Parliament has the power to amend every part of the Constitution. The intention was to wipe out the effect of Golak Nath. After this amendment the President is bound to assent to a Constitution Amendment Bill.
25.	The Constitution	20-4-1972	20-4-1972	Yes.	Clause (2) of Art. 31 amended and Cl. (2A) inserted, Art. 31C

	(Twenty-fifth Amendment) Act, 1971				inserted. The jurisdiction of the Courts to determine the adequacy of compensation on acquisition of property was taken away. A new Clause was added to lay down that no law which declared that it was for giving effect to the principles specified in Cls. (b) and (c) of Art. 39 would be called in question on the ground that it is inconsistent with the fundamental rights.
Sl. No	Act	Date of assent by President	Date of commencement	Whether ratified by more than half of State Legislatures, as required by the Proviso to Art. 368	Amendment made
26.	The Constitution (Twenty-sixth Amendment) Act, 1971	28-12-1971	28-12-1971		Omitting Arts. 291, 362; inserting Art. 363A; amending Art. 366(22). The recognition to the Rulers of Princely States was withdrawn and their privy purses were abolished.
27.	The Constitution (Twenty-seventh Amendment) Act, 1971	30-12-1971	s. 3 from 30-12-1971, rest from 15-2-1972		Amending Art. 239A; inserting Art. 239B; amending Art. 240; inserting Art. 371C. Two new Union Territories viz. Mizoram and Arunachal Pradesh, were formed.
28.	The Constitution (Twenty-eighth Amendment) Act, 1972	27-8-1972	29-8-1972		Inserting Art 312A; omitting Art 314. The conditions of service and privileges of former Indian Civil Service officers were abolished.
29.	The Constitution (Twenty-ninth Amendment) Act, 1972	9-6-1972	9-6-1972		Adding items 65-66 to the Ninth Schedule. Two Kerala Acts pertaining to land reforms were included in the Ninth Schedule.

30.	The Constitution (Thirty-ninth Amendment) Act, 1972	22-2-1973	27-2-1973	Yes.	Amending Art. 133(1). Appeals to the Supreme Court were curtailed. Only such appeals can be brought which involve a substantial question of Law.
31.	The Constitution (Thirty-first Amendment) Act, 1973	17-10-1973	17-10-1973		Amending Arts. 81, 330, 332. Elected seats in Lok Sabha increased from 525 to 545.
32.	The Constitution (Thirty-second Amendment) Act, 1973	3-5-1974	1-7-1974		Amending Art. 371(1) and inserting Arts. 371D-371E; amending Entry 63 of List I, Seventh Schedule. The object was to include six provisions in regard to Andhra Pradesh.
33.	The Constitution (Thirty-third Amendment) Act, 1974	19-5-1974	19-5-1974		Amending Arts. 101, 190. It was provided that if a member of a State legislature or Parliament sends his resignation, the Chairman or Speaker would satisfy himself that it is voluntary and genuine.
34.	The Constitution (Thirty-fourth Amendment) Act, 1974	7-9-1974	7-9-1974	Yes.	Adding items 67-86 to the Ninth Schedule.
35.	The Constitution (Thirty-fifth Amendment) Act, 1974	22-2-1975	1-3-1975	Yes.	Inserting Art 2A and amending Arts. 80-81; adding Tenth Schedule. Sikkim was made an associate State.
36.	The Constitution (Thirty-sixth Amendment) Act, 1975	16-5-1975	26-4-1975	Yes.	Omitting Art. 2A, Schedule X; adding item 22 to Schedule I; inserting Art. 371F; adding Entry 22 to Schedule IV. Sikkim was made a full fledged State.
37.	The Constitution (Thirty-seventh Amendment)	3-5-1975	3-5-1975		Amending Arts. 239A-240; repealing Tenth Schedule. Provision was made for a legislative Assembly and Council of Ministers for the Union

) Act, 1975				Territory of Arunachal Pradesh.
38.	The Constitution (Thirty-eighth Amendment) Act, 1975			Yes.	Amending Arts. 123, 213, 239B, 352, 356, 359, 360. Declaration of Emergency by the President and promulgation of Ordinances by the President or Governor made issues over which the judiciary would not be able to exercise its power of review.
Sl. No .	Act	Date of assent by President	Date of commencement	Whether ratified by more than half of State Legislatures, as required by the Proviso to Art. 368	Amendment made
39.	The Constitution (Thirty-ninth Amendment) Act, 1975	1-8-1975 10-8-1975	1-8-1975 10-8-1975	Yes.	Amending Art. 71; inserting Art. 329A. Questions regarding elections of President, Vice-President, Prime Minister and Speaker of Lok Sabha taken out of the purview of the judiciary.
40.	The Constitution (Fortieth Amendment) Act, 1976	27-5-1976	27-5-1976		Substituting Art 297; adding Entries 125 to 188 to Schedule DC. It was provided that all lands, minerals etc. underlying the ocean within the territorial waters or the continental shelf or the exclusive economic zone of India shall vest in the Union. Power to determine the limits of territorial waters, continental shelf etc. was vested in the Parliament.
41.	The Constitution (Forty-first Amendment) Act, 1976	7-9-1976	7-9-1976		Amending Art. 316. Upper age for members of State Public Service Commission raised from 60 to 62.
42.	The Constitution (Forty-second	18-12-1976	Different dates, commencing from 3-1-1977, according to	Yes.	Amending Preamble, Arts. 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 105, 118, 145, 166, 170, 172, 189, 191, 194, 208,

Sl. No	Act	Date of assent by President	Date of commencement	Whether ratified by more than	Amendment made
	Amendment) Act, 1976		G.I. Notification of 3-1-1977		217,225,227,228,311,312,330,352, 353,356,357,358,359,366,368,371 F, Seventh Schedule; Substituting Arts. 103, 150, 192, 226; inserting Arts. 31D, 32A, 39A, 43A, 48A, 51A, 131A, 139, 144A, 226A, 228A, 257A, 323A, 323B. This amendment was almost a complete revision of the Constitution and many material changes were incorporated. It was enacted during an emergency. The next government that came into power in 1977 repealed most of the amendments.
43.	The Constitution (Forty-third Amendment) Act, 1977	13-4-1978	13-4-1978	Yes.	Omitting Arts. 31D, 32A, 131A, 144A; amending Art. 145. This amendment omitted many articles inserted by the 42nd Amendment Act. Some articles were changed.
44.	The Constitution (Forty-fourth Amendment) Act, 1978	30-4-1979	Different dates as notified by Central Government, for different provisions; 19-6-1979: Arts. 19, 30, 31, 31A, 31C, 74, 77, 83, 103, 105, 123, 150, 166, 194, 213, 217, 225, 227, 257A, 300A, 352, 356, 358, 359, 360, 361A.	Yes.	Omitting Arts. 19(l)(f), 31, 77(4), 123(4), 166(4), 213(4), 239B(4), 257A, 329A. Inserting Arts. 30(1A), 134A, 300A 361A. Amending and substituting, Arts. 19(1), 22, 31A, 31C, 38, 71, 74, 83, 103, 105, 123, 132-134, 139A, 172, 192, 194, 217, 225, 226, 227, 329 352, 356, 358, 359, 360, 361, 371F. Cancelling the amendments made by the 42nd Amendment Act to— Arts. 100, 102, 105, 118, 191, 194, 208. (6 clauses of the Bill were rejected by the Rajya Sabha). The changes made by the 42nd Amendment Act were repealed or altered and the Constitution was brought back in its original form. But the right to Property was taken away from the Chapter of Fundamental Rights and put as a new Art. 300A.

		t		half of State Legislatures, as required by the Proviso to Art. 368	
45.	The Constitution (Forty-fifth Amendment) Act,	14-4-1980	25-1-1980	Yes.	Extending reservation under Art. 334 from 30 to 40 years.
46.	1980 The Constitution (Forty-sixth Amendment) Act, 1982	2-2-1983	2-2-1983		Amending Arts. 269, 286, 366, List I, relating to Sales Tax.
47.	The Constitution (Forty-seventh Amendment) Act, 1984	26-8-1984	26-8-1984		Adding Entries 180, 202, to the Ninth Schedule.
48.	The Constitution (Forty-eighth Amendment) Act, 1984	26-8-1984	26-8-1984		Inserting Proviso to Cl. (5) of Art. 356 to extend President's Rule in Punjab.
49.	The Constitution (Forty-ninth Amendment) Act, 1984	11-9-1984	1-4-1985		Amending Art. 244, Fifth & Sixth Schedules. Sixth Schedule was made applicable to Tripura.
50.	The Constitution (Fiftieth Amendment) Act, 1984	11-9-1984	11-9-1984	...	Substituting Art. 33. Its scope was enlarged and many other Forces were included in its ambit.
51.	The Constitution (Fifty-first Amendment) Act, 1984		16-6-1986	Yes.	Amending Arts. 330, 332.

52.	The Constitution (Fifty-second Amendment) Act, 1985	15-2-1985	1-3-1985		Amending Arts. 101, 102, 190, 191; adding Tenth Schedule (anti-defection). It was declared that a member who defects from his party would become subject to disqualification.
53.	The Constitution (Fifty-third Amendment) Act, 1986	14-8-1986	14-8-1986		Adding Art 371G. Mizoram was made a State.
54.	The Constitution (Fifty-fourth Amendment) Act, 1986		1-4-1986		Amending Arts. 125, 221, Second Schedule. Appropriate provisions were made to increase the salary of the judges of the Supreme Court and High Courts.
55.	The Constitution (Fifty-fifth Amendment) Act, 1986	23-12-1986	20-2-1987	...	Inserting Art 371-H. State of Arunachal Pradesh was formed.
56.	The Constitution (Fifty-sixth Amendment) Act, 1987	23-5-1987	30-5-1987		Inserting Art. 371-I. The Union Territory of Goa, Daman, Diu was divided. Goa was made a State and provision for a State assembly were inserted. Daman and Diu to be a Union Territory.
57.	The Constitution (Fifty-seventh Amendment) Act, 1987	15-9-1987	21-9-1987		Clause (3A) inserted in Art. 332. Articles 330 and 332 were amended to make provision for reservation of seats for Scheduled Tribes of Nagaland, Meghalaya, Mizoram and Arunachal Pradesh, in the Lok Sabha and in the legislative assemblies of Nagaland and Meghalaya.
58.	The Constitution (Fifty-eighth Amendment) Act, 1987	9-12-1987	9-12-1987		Inserting Art. 394A. The people had been demanding that the authoritative text of the Constitution should be published in Hindi. This amendment authorised the President to publish the authoritative text of the Constitution in Hindi.

59.	The Constitution (Fifty-ninth Amendment) Act, 1988	30-3-1988	30-3-1988		Inserting Art. 359A; Amending Art. 356. Art 356 was amended to provide that the declaration of emergency may remain in operation up to 3 years. The amendment made in Art. 352 provided that the emergency with respect to Punjab shall operate only in that State.
Sl. No .	Act	Date of assent by President	Date of commencement	Whether ratified by more than half of State Legislatures, as required by the Proviso to Art. 368	Amendment made
60.	The Constitution (Sixtieth Amendment) Act, 1988	20-12-1988	20-12-1988		Amending Art. 276, to increase the limit of profession-tax from Rs. 250 to Rs. 2,500.
61.	The Constitution (Sixty-first Amendment) Act, 1989	28-3-1989	28-3-1989	Yes.	Amending Art 326, to reduce the voting age from 21 to 18 years.
62.	The Constitution (Sixty-second Amendment) Act, 1989	25-1-1990	20-12-1989	Yes.	Amending Art. 334, to increase the period of reservation of seats for Scheduled Castes and Tribes for 10 years i.e. upto the year 2000 A.D.
63.	The Constitution (Sixty-third Amendment) Act, 1989	6-1-1990			Amending Art. 356 [omitting Proviso to Cl. (5) and omitting Art 359A]. With regard to Punjab Cl. (5) was inserted in Art. 356 and a new Art. 359A had been added. Both of these were omitted. The Government intended to end the emergency in Punjab and this step was taken with that in view.
64.	The	6-4-1990			Amending Art. 356. As normalcy

	Constitution (Sixty-fourth Amendment) Act, 1990				could not be restored in Punjab, emergency was to be continued. For that necessary provision was made in Art. 356.
65.	The Constitution (Sixty-fifth Amendment) Act, 1990	7-6-1990	12-3-1992		Amending Art. 338, to provide for a National Commission for Scheduled Castes and Scheduled Tribes. The Commission has been given wide powers.
66.	The Constitution (Sixty-sixth Amendment) Act, 1990	7-6-1990		Inserting Entries 203 to 257 in the Ninth Schedule.
67.	The Constitution (Sixty-seventh Amendment) Act, 1990	4-10-1990			Amending Art. 356, 3rd Proviso, Cl. (a) extending President's Rule in Punjab to 4 years.
68.	The Constitution (Sixty-eighth Amendment) Act, 1991	12-3-1991			Amending Art. 356, 3rd Proviso, Cl. (a), extending the period to 5 years.
69.	The Constitution (Sixty-ninth Amendment) Act, 1991	12-12-1991	1-2-1992		Inserting Arts. 239AA and 239AB, to provide for a legislative Assembly and Council of Ministers for the Union Territory of Delhi.
70.	The Constitution (Seventieth Amendment) Act, 1992	12-8-1992	s. 3 retrospectively from 21-12-1991 s. 2 from 12-8-1992	Yes.	Amending Arts. 54 and 368 to include Members of Legislative Assemblies of Union Territories of Delhi and Pondicherry in the electoral college.
71.	The Constitution (Seventy-first Amendment) Act, 1992	31-8-1992	31-8-1992		Inserting entries 7, 9, 11 and reinserting some entries in 8th Sch.

Sl. No	Act	Date of assent by President	Date of commencement	Whether ratified by more than half of State Legislatures, as required by the Proviso to Art. 368	Amendment made
72.	The Constitution (Seventy-second Amendment) Act, 1992	5-12-1992	5-12-1992		Inserting Cl. (3B) in Art. 332.
73.	The Constitution (Seventy-third Amendment) Act, 1992	20-4-1993	24-4-1993	Yes.	Re. Panchayat [Inserting Part IX, containing Arts. 243, 243A to 243-O; Eleventh Sch.].
74.	The Constitution (Seventy-fourth Amendment) Act, 1992	20-4-1993	1-6-1993	Yes.	Re. Nagarpalika (Municipalities) [Inserting Part IXA, containing Arts. 243P to 243ZG; Twelfth Sch.].
75.	The Constitution (Seventy-fifth Amendment) Act, 1993	5-2-1994	15-5-1994	Yes.	Inserting sub-Cl. (h) in Art 323 B(2).
76.	The Constitution (Seventy-sixth Amendment) Act, 1994	31-8-1994	31-8-1994	Yes.	Inserting entry 237A in the 9th Sch.
77.	The Constitution (Seventy-seventh Amendment)	17-6-1995	17-6-1995		Inserting Cl. (4A) in Art. 16.

) Act, 1995				
78.	The Constitution (Seventy-eighth Amendment) Act, 1995	30*1995	30-8-1995		Further addition of 27 entries to the 9th Sch. to the Constitution.
79.	The Constitution (Seventy-Ninth Amendment) Act, 1999	21-1-2000	25-1-2000	Yes.	Substituting "sixty years" for the words "fifty years" in Art. 334.
80.	The Constitution (Eightieth Amendment) Act, 2000	9*2000	1-4-1996		Substituting new clauses for Cls. (1) and (2) of Art. 269; new Article for Art 270 and omitting Art. 272.
81.	The Constitution (Eighty-First Amendment) Act, 2000	9*2000			Inserting Cl. (4B) in Art. 16.
82.	The Constitution (Eighty-Second Amendment) Act, 2000	8-9-2000			Inserting a Proviso to Art. 335.
83.	The Constitution (Eighty-Third Amendment) Act, 2000	8-9-2000			Inserting Cl. (3A) in Art 243M.

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TABLE V FUNDAMENTAL RIGHTS

Right to Equality

1. Equality before law and Equal protection before law [Art. 14].
2. Prohibition of discrimination on ground of religion etc. [Art 15].

3. Equality of opportunity in employment [Art 16].
4. Abolition of un-touchability [Art. 17],
5. Abolition of titles [Art. 18].

Right to Freedom

1. Freedom of speech and expression; assembly; association; movement; residence and settlement;'profession [Art. 19].
2. Protection in respect of conviction for offences [Art 20].
3. Protection of life and personal liberty [Art 21].
4. Protection against arrest and detention in certain cases [Art 22].

Right against Exploitation

1. Prohibition of traffic in human beings and forced labour [Art 23].
2. Prohibition of employment of
- children in hazardous employment [Art 24].

Right to Freedom of Religion

1. Freedom of conscience and free profession
[Art 25].
2. Freedom to manage religious affairs [Art. 26].
3. Freedom as to payment of taxes for promotion of any particular religion [Art. 27],
4. Freedom as to attendance at religious instruction in certain educational institutions [Art. 28].

Cultural and Educational Rights

1. Protection of language, script or culture of minorities [Art 29],
2. Right of minorities to establish and administer educational institutions [Art. 30].

Right to Property1

Right to Constitutional Remedies

Remedies for enforcement of the fundamental rights conferred by this Part,—writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto [Art. 32].

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TABLE VI DIRECTIVE PRINCIPLES OF STATE POLICY

Directives in the Nature of Ideals of the State:

1. The State shall strive to promote the welfare of the people by securing a social order permeated by social, economic and political justice [Art. 38(1)]; to minimise inequality in income, status, facilities and opportunities, amongst individuals and groups [Art. 38(2)].¹
2. The State shall endeavour to secure just and human conditions of work, a living wage, a decent standard of living and social and cultural opportunities for all workers [Art. 43].
3. The State shall endeavour to raise the level of nutrition and standard of living and to improve public health [Art. 47].
4. The State shall direct its policy towards securing equitable distribution of the material resources of the community and prevention of concentration of wealth and means of production [Art. 39(b)-(c)].
5. The State shall endeavour to promote international peace and amity [Art. 51].

Directives Shaping the Policy of the States:

1. To establish economic democracy and justice by securing certain economic rights (to be enumerated in the next column).
2. To secure a uniform civil code for the citizens [Art. 44].
3. To provide free and compulsory primary education [Art. 45].
4. To prohibit consumption of liquor and intoxicating drugs except for medical purposes [Art. 47].
5. To develop cottage industries [Art. 43].
6. To organise agriculture and animal husbandry on modern lines [Art. 48].
7. To prevent slaughter of useful cattle, i.e., cows, calves, and other milch and draught cattle [Art. 48].
8. To organise Village Panchayats as units of self-government [Art. 40].

9. To promote educational and economic interests of weaker sections and to protect them from social injustice [Art. 46].
10. To protect and improve the environment and to safeguard forests and wild life [Art. 48A].2
11. To protect and maintain places of historic or artistic interest [Art. 49].
12. To separate the judiciary from the Executive [Art. 50].

Non-justiciable Rights of Citizens:

1. Right to adequate means of livelihood [Art. 39(a)].
 2. Right of both sexes to equal pay for equal work [Art. 39(d)].
 3. Right against economic exploitation [Art. 39(e)-(f)].
 4. Right of children and the young to be protected against exploitation and to opportunities for healthy development, consonant with freedom and dignity [Art. 39(f)].2
 5. Right to equal opportunity for justice and free legal aid [Art. 39A].2
 - 6'. Right to work [Art. 41].
 7. Right to public assistance in case of unemployment, old age, sickness and other cases of undeserved want [Art. 41].
 8. Right to humane conditions of work and maternity relief [Art. 42].
 9. Right to a living wage and conditions of work ensuring decent standard of life for workers [Art. 43].
 10. Right of workers to participate in management of industries [Art. 43A].2
 11. Right of children to free and compulsory education [Art. 45].
1. Added by the 44th Amendment Act, 1978.
 2. Added by the 42nd Amendment Act, 1976.

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TABLE VII FUNDAMENTAL DUTIES OF CITIZENS1

- (a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform; (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

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TABLE VIII GOVERNMENT OF THE UNION President

On November 14, 2000 there were in the Council of Ministers—

- 1. (a) 30 Ministers of the Cabinet, including the Prime Minister;
- (b) 44 Ministers Of State; and
- 2. In July, 1989, the actual number of Members of the Council of States was 245, of whom 233 were representatives of the States and Union Territories, and 12 nominated by the President (see Table XI).
- 3. On 18 November, 1999, the actual number of seats in the House of the People was 543, consisting of— 529 representatives of States (including 6 from Jammu and Kashmir). 14 representatives of Union Territories of Delhi; Pondicherry; Chandigarh; Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli; Daman and Diu. 2 nominated Anglo-Indians (for a population of 1,40,000).

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TABLE IX OFFICES OF PRESIDENT AND VICE-PRESIDENT COMPARED

President	Vice President
Election : Elected by electoral college consisting of the	Elected by an electoral college

elected members of (a) both Houses of Parliament; (b)	consisting of members of both Legislative Assemblies of States.
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Both elections to be in accordance with the system of proportional representation by single transferable vote.

Qualifications for Election :

(a) Must be a citizen of India;

(b) Must have completed the age of 35 years; and

(c) Must be qualified for election of House of the People.	(c) Must be qualified for election to Council of States.
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(d) Must not hold any office of profit under the Government of India or of a State or any other authority under the control of either Government, excepting the offices of President, Vice-President, Governor of a State or Minister of the Union or of a State.

Term of Office :

Five years from the date of entering office :

(a) May resign earlier, by writing addressed to Vice-President.	(a) May resign earlier, by writing addressed to President.
(b) May be removed by the process of impeachment.	(b) May be removed by a resolution passed by a majority of members of Council of States and agreed to by House of the People.

Both eligible for re-election, any number of times.

Functions :	Has no functions as Vice-President	The executive power in the Union is vested in him, and he exercises it, on the advice of the Council of Ministers of the Union.	except that when a vacancy arises in the office of President, he has to act as President until a new President is elected and enters upon office. Except when a vacancy arises in office of President, the Vice-President acts as ex-officio Chairman of Council of States.
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TABLE X A. PRESIDENTS OF INDIA

Name	Tenure
1. Dr. Rajendra Prasad (1884-1963)	26 January 1950 — 13 May 1962

2. Dr. Sarvepalli Radhakrishnan (1888-1975)	13 May 1962 — 13 May 1967
3. Dr. Zakir Hussain (1897-1969)	13 May 1967 — 3 May 1969 (died)
4. Varahagiri Venkatagiri (1884-1980)	3 May 1969 — 20 July 1969 (Acting)
5. Justice Mohammad Hidayatullah (1905-1992)	20 July 1969 — 24 August 1969 (Acting)
6. Varahagiri Venkatagiri	24 August 1969 — 24 August 1974
7. Fakhruddin Ali Ahmed (1905-1977)	24 August 1974 — 11 February 1977 (died)
8. B.D.Jatti (b. 1913)	11 February 1977 — 25 July 1977 (Acting)
9. Neelam Sanjiva Reddy (1913-1996)	25 July 1977 — 25 July 1982
10. Giani Zail Singh (1916-1994)	25 July 1982 — 25 July 1987
11. M. Hidayatullah (1905-1992)	6 October 1982 — 31 October 1982 (discharged the functions of the President)
12. R. Venkataraman (b. 1910)	25 July 1987 — 25 July 1992
13. Dr. Shanker Dayal Shanna (1918-1999)	25 July 1992 — 25 July, 1997
14. Dr. K.R. Narayanan (b. 1920)	25 July 1997 — till date

B. VICE-PRESIDENTS OF INDIA

Name	Tenure
1. Dr. Sarvepalli Radhakrishnan	1952 — 1962
2. Dr. Zakir Hussain	1962 — 1967
3. Varahagiri Venkatagiri	1967 — 1969
4. Gopal Swamp Pathak (1896-1982)	1969 — 1974
5. B.D.Jatti	1974 — 1979
6. Mohammad Hidayatullah	1979 — 1984
7. R. Venkataraman	1984 — 1987
8. Dr. Shanker Dayal Sharma	1987 — 1992
9. K.R. Narayanan	1992 — 1997
10. Krishan Kant (b. 1927)	1997 — till date

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C. PRIME MINISTERS OF INDIA

Name	Tenure
1. Jawaharlal Nehru (1889-1964)	15 August 1947 — 27 May 1964 (died)
2. Gulzari Lai Nanda (b. 1898)	27 May 1964 — 9 June 1964 (Acting)

3. Lal Bahadur Shastri (1904-1966)	9 June 1964— 11 January 1966 (died)
4. Gulzari Lai Nanda (b. 1898)	11 January 1966 — 24 January 1966 (Acting]
5. Indira Gandhi (1917-1984)	24 January 1966 — 24 March 1977
6. Morarji Desai (1896-1995)	24 March 1977 — 28 July 1979
7. Charan Singh (1902-1987)	28 July 1979 — 14 January 1980
8. Indira Gandhi (1917-1984)	14 January 1980 — 31 October 1984 (died)
9. Rajiv Gandhi (1944-1991)	31 October 1984 — 1 December 1989
10. Vishwanath Pratap Singh (b. 1931)	2 December 1989 — 10 November 1990
11. Chandra Shekhar (b. 1927)	10 November 1990 — 21 June 1991
12. P.V. Narasimha Rao (b. 1921)	21 June 1991 — 16 May 1996
13. Atal Bihari Bajpayee (b. 1926)	16 May 1996 — 1 June 1996
14. H.D. Deve Gowda (b. 1933)	1 June 1996 — 20 April 1997
15. I.K. Gujral (b. 1919)	21 April 1997 — 18 March 1998
16. Atal Bihari Bajpayee (b. 1926)	19 March 1998 — 13 October 1999
17. Atal Bihari Bajpayee (b. 1926)	13 October 1999 — till date

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TABLE XI REPRESENTATION OF STATES AND UNION TERRITORIES IN THE COUNCIL OF STATES (RAJYA SABHA) (as in December, 2000)

States :						
Andhra Pradesh						18
Arunachal Pradesh						1
Assam						7
Bihar						[16]1
2[Chhaliugarh						5]
Goa						1
Gujarat						11
Haryana						5
Himachal Pradesh						3
Jammu and Kashmir						4
3[Jharkhand						6]
Karnataka						12
Kerala						9
Madhya Pradesh						[11]4
Maharashtra						19
Manipur						1

Meghalaya					1
Mizoram					1
Nagaland					1
Orissa					10
Punjab					1
Rajasthan					10
Sikkim					1
Tamil Nadu					I8
Tripura					1
5[Uttaranchal					3]
Uttar Pradesh					[31]6
West Bengal					16
Union Territories :					
Delhi					3
Pondicherry					1
			Total		2337

1. Substituted by The Bihar Reorganisation Act, 2000, s. 7.
2. Inserted by The Madhya Pradesh Reorganisation Act, 2000, s. 7.
3. Inserted by The Bihar Reorganisation Act, 2000, s. 7.
4. Substituted for "16" by The Madhya Pradesh Reorganisation Act, 2000, s. 7.
5. Inserted by The Uttar Pradesh Reorganisation Act, 2000, s. 7.
6. Substituted by The Uttar Pradesh Reorganisation Act, 2000, s. 7.
7. Plus 12 nominated by President = 245.

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TABLE XII ALLOCATION OF SEATS IN THE HOUSE OF PEOPLE

Name of the State/ Union Territory	Total	Reserved for the Scheduled Castes	Reserved for the Scheduled Tribes
States:			
Andhra Pradesh	42	6	3
Arunachal Pradesh	2	—	2
Assam	14	1	2

Bihar	[40]	7	-]1
2[Chhattisgarh	11	2	4]
Goa	2	—	—
Gujarat	26	2	4
Haryana	10	2	—
Himachal Pradesh	4	1	—
Jammu and Kashmir	6	—	—
3[Jharkhand	14	1	5]
Kamataka	28	4	1
Kerala	20	2	—
Madhya Pradesh	[29	4	—
Maharashtra	48	3	4
Manipur	2	—	1
Meghalaya	2	—	2
Mizoram	1	—	1
Nagaland	1	—	1
Orissa	21	4	5
Punjab	13	4	—
Rajasthan	25	4	3
Sikkim	1	—	—
Tamil Nadu	39	7	—
Tripura	2	—	—
5[Uttaranchal	5	1	-]
Uttar Pradesh	[80	17]6
West Bengal	42	8	2
Union Territories:			
Andaman and Nicobar Islands	1	—	—
Chandigarh	1	—	—
Dadra and Nagar Haveli	1	—	1
Daman and Diu	1	—	—
Delhi	7	1	—
Lakshadweep	1	—	1
Pondicherry	1	—	—
Total	543]	781	49

1. Vide The Bihar Reorganisation Act, 2000, s. 9(a).
2. Vide The Madhya Pradesh Reorganisation Act, 2000, s. 9.
3. Vide The Bihar Reorganisation Act, 2000, s. 9(c).
4. Vide The Madhya Pradesh Reorganisation Act, 2000, s. 9.
5. Vide The Uttar Pradesh Reorganisation Act, 2000, s. 9.
6. Vide The Uttar Pradesh Reorganisation Act, 2000, s. 9.
7. Plus 2 Anglo-Indians Nominated by President = 545.

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TABLE XIII LOK SABHA AND ITS SPEAKER(S)

Lok Sabha			Speaker (s)		
	Date of first meeting after its constitution	Date of dissolution	Name	From	To
First Lok Sabha	13 May 1952	4 April 1957	Ganesh Vasudev Mavalankar M. Ananthasayanam Ayyanger	15 May 1952 March 1956	27 Feb. 1956 10 May 1957
Second Lok Sabha	10 May 1957	31 March 1962	M. Ananthasayanam Ayyanger	11 May 1957	6 April 1962
Third Lok Sabha	16 April 1962	3 March 1967	Hukam Singh	17 April 1962	16 March 1967
Fourth Lok Sabha	16 March 1967	27 Dec. 1970	Neelam Sanjiva Reddy Dr. Gurdial Singh Dhillon	17 March 1967 Aug. 1969	19 July 1969 19 March 1971
Fifth Lok Sabha	19 March 1971	18 Jan. 1977	Dr. Gurdial Singh Dhillon Bali Ram Bhagat	22 March 1971 5 Jan. 1976	1 Dec. 1975 25 March 1977
Sixth Lok Sabha	25 March 1977	22 Aug. 1979	Neelam Sanjiva Reddy K.D. Hegde	26 March 1977 July 1977	13 July 1977 21 Jan. 1980
Seventh Lok Sabha	21 Jan. 1980	31 Dec. 1984	Dr. Bal Ramjakhar	22 Jan. 1980	15 Jan. 1985
Eighth Lok Sabha	15 Jan. 1985	27 Nov. 1989	Dr. Bal Ramjakhar	16 Jan. 1985	18 Dec. 1989

Ninth Lok Sabha	18 Dec. 1989	13 March 1991	Rabi Ray	19 Dec. 1989	9 July 1991
Tenth Lok Sabha	9 July 1991	10 May 1996	Shivraj Paul	10 July 1991	22 May 1996
Eleventh Lok Sabha	22 May 1996	4 Dec. 1997	P.A. Sangma	23 May 1996	23 March 1998
Twelfth Lok Sabha	23 March 1998	26 April 1999	G.M.C. Balayogi	24 March 1998	20 October 1999
Thirteenth Lok Sabha	20 October 1999	-	G.M.C. Balayogi	22 October 1999	Till date.

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TABLE XIV GOVERNMENT OF STATES

1. The total number of seats in the States (including Jammu and Kashmir) which had a Legislative Council, in December, 2000, was 363.
2. The total number of seats in the Legislative Assemblies of the States and Union Territories, in December, 2000, was 4,019 [see next Table].

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TABLE XV MEMBERSHIP OF LEGISLATIVE ASSEMBLIES AND LEGISLATIVE COUNCILS (As in December, 2000)

	Legislative Assembly	Legislative Council
Andhra Pradesh	294	Nil
Arunachal Pradesh	40	Nil
Assam	126	Nil
Bihar	[243]	[75]2
3[Chhattisgarh]	90	Nil]
Goa	40	Nil
Gujarat	182	Nil
Haryana	90	Nil
Himachal Pradesh	68	Nil
Jammu and Kashmir	76	36
*[Jharkhand]	81	Nil]
Karnataka	224	75
Kerala	140	Nil
Madhya Pradesh	[230]5	Nil
Maharashtra	288	78

Manipur	60	Nil
Meghalaya	60	Nil
Mizoram	40	Nil
Nagaland	60	Nil
Orissa	147	Nil
Punjab	117	Nil
Rajas than	200	Nil
Sikkim	32	Nil
Tamil Nadu	234	Nil
Tripura	60	Nil
Union Territory of Pondicherry	30	Nil
6[Uttaranchal	70	Nil]
Uttar Pradesh	[403]7	[99]8
West Bengal	294	Nil
	4,019	363

1. Vide The Bihar Reorganisation Act, 2000, s. 12(1).
2. Vide The Bihar Reorganisation Act, 2000, s. 17.
3. Vide The Madhya Pradesh Reorganisation Act, 2000, s. 12(1).
4. Vide The Bihar Reorganisation Act, 2000, s. 12(1).
5. Vide The Madhya Pradesh Reorganisation Act, 2000, s. 12(1).
6. Vide The Uttar Pradesh Reorganisation Act, 2000, s. 12(1).
7. Vide The Uttar Pradesh Reorganisation Act, 2000, s. 12(1).
8. Vide The Uttar Pradesh Reorganisation Act, 2000, s. 18.

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1. Chief Justice and 25 other Judges.
2. At the end of 1996, there were over 517 Judges (Present position is not available) in the 21 High Courts.

3. At the end of 1996, there were about 2,067 (Present position is not available) District and Sessions Judges, and 1,376 (Present position is not available) Senior Civil Judges and Chief Judicial Magistrates.

4. At the end of 1996, there were about 4,307 (Present position is not available) Munsiffs/Subordinate Judges.

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TABLE XVII JURISDICTION AND SEATS OF HIGH COURTS

Name	Year of Establishment	Territorial Jurisdiction	Seat
Allahabad	1866	Uttar Pradesh	Allahabad (Bench at Lucknow)
Andhra Pradesh	1954	Andhra Pradesh	Hyderabad
Bombay	1862	Maharashtra, Dadra and Nagar Haveli and Goa, Daman and Diu	Bombay (Bench at Nagpur, Panaji and Aurangabad)
Calcutta	1862	West Bengal and Andaman and Nicobar Islands	Calcutta (Circuit bench at Port Blair)
Chhattisgarh	2000	Bilaspur	Chhattisgarh
Delhi	1966	Delhi	Delhi
Guwahati	1948	Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh	Guwahati (Bench at Kohima and Circuit benches at Imphal, Agartala and Shillong)
Gujarat	1960	Gujarat	Ahmedabad
Himachal Pradesh	1971	Himachal Pradesh	Shimla
Jammu and Kashmir	1957	Jammu and Kashmir	Srinagar and Jammu
Jharkhand	2000	Ranchi	Jharkhand
Karnataka	1884	Karnataka	Bangalore
Kerala	1956	Kerala and Lakshadweep	Ernakulam
Madhya Pradesh	1956	Madhya Pradesh	Jabalpur (Benches at Gwalior and Indore)
Madras	1862	Tamil Nadu and Pondicherry	Madras
Orissa	1948	Orissa	Cuttack
Patna	1916	Bihar	Patna (Bench at Ranchi)
Punjab and Haryana	1966	Punjab, Haryana and Chandigarh	Chandigarh

Rajasthan	1950	Rajasthan	Jodhpur (Bench at Jaipur)
Sikkim	1975	Sikkim	Gangtok
Uttaranchal	2000	Nanital	Uttaranchal

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TABLE XVIII TERRITORIAL JURISDICTION OF BENCHES OF CENTRAL ADMINISTRATIVE TRIBUNAL

Sl No.	Bench	Jurisdiction of the Bench
(1)	(2)	(3)
1.	Principal Bench (New Delhi)	National Capital Territory of Delhi
2.	Ahmedabad Bench	State of Gujarat
3.	Allahabad Bench	State of Uttar Pradesh excluding the District mentioned against serial Number 4 under the jurisdiction of Lucknow Bench
4.	Lucknow Bench	Districts of Lucknow, Hardoi, Kheri, Rai Barelli, Sitapur, Unnao, Faizabad, Bahraich, Barabanki, Gonda, Pratapgarh and Sultanpur in the State of Uttar Pradesh
5.	Bangalore Bench	State of Karnataka
6.	Calcutta Bench	States of Sikkim and West Bengal and Union Territory of Andaman and Nicobar Islands
7.	Chandigarh Bench	States of Jammu & Kashmir, Haryana, Himachal Pradesh and Punjab and the Union Territory of Chandigarh
8.	Cuttack Bench	State of Orissa
9.	Ernakulam Bench	State of Kerala and Union Territory of Lakshadweep
10.	Guwahati Bench	States of Assam, Manipur, Meghalaya, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram
11.	Hyderabad Bench	State of Andhra Pradesh
12.	jabalpur Bench	State of Madhya Pradesh
13.	Jodhpur Bench	State of Rajasthan excluding the District mentioned against serial Number 14 under the jurisdiction of Jaipur Bench
14.	Jaipur Bench	Districts of Ajmer, Alwar, Baran, Bharatpur, Bundi, Dausa, Dholpur, Jaipur, Jhunjhunu, Kotah, Sawai-Madhopur, Sikar and Tonk in the State of Rajasian
15.	Madras Bench	State of Tamil Nadu and the Union Territories of Pondicherry
16.	Bombay Bench	State of Maharashtra and Goa the Union Territories of Dadra and Nagar Haveli and, Daman and Diu.
17.	Panta Bench	State of Bihar

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TABLE XIX DISTRIBUTION OF LEGISLATIVE POWER

List I—Union List.

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
 2. Naval, military and air forces; any other armed forces of the Union.
 - 2A. Deployment of armed forces of the Union in any State.¹
 3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
 4. Naval, military and air force works.
 5. Arms, firearms, ammunition and explosives.
 6. Atomic energy and mineral resources necessary for its production.
 7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
 8. Central Bureau of Intelligence and Investigation.
 9. Preventive detention for reasons connected with Defence, Foreign Affairs or the security of India; persons subjected to such detention.
 10. Foreign Affairs; all matters which bring the Union into relation with any foreign country.
 11. Diplomatic, consular and trade representation;
1. Inserted by the Constitution (42nd Amendment) Act, 1976.

List II—State List.

1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of civil power).
2. Police, including railway and village Police, subject to Entry 2A of List I.¹
3. Officers and servants of the High Court; procedure in rent and revenue Courts; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.
 5. Local government, that is to say, the constitution and powers of municipal corporation, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
 6. Public health and sanitation, hospitals and dispensaries.
 7. Pilgrimages, other than pilgrimages to places outside India.
 8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
 9. Relief of the disabled and unemployable.
 10. Burials and burial grounds; cremations and cremation grounds.
 11. Omitted..1
1. Entry 11 omitted by the Constitution (42nd Amendment) Act, 1976.
- List III—Concurrent List.**
1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
 2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.
 3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
 4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List
 5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
 6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

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12. United Nations Organisation.

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

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into, and emigration and expulsion from India; passports and visas.

20. Pilgrimages to places outside India.

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

22. Railways.

23. Highways declared by or under law made by Parliament to the national highways.

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

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

26. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

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

12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament¹ to be of national importance.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways, ropeways; inland waterways and traffic thereon subject to the provisions of List I and List HI with regard to such waterways; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

16. Pounds and the prevention of cattle trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that is to say, rights in or over land, and tenures including the relations of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvements and agricultural loans; colonisation.

19. Omitted.²

20. Omitted.²

21. Fisheries.

1. Substituted by the Constitution (7th Amendment) Act, 1956.

2. Omitted by the Constitution (42nd Amendment) Act, 1976.

8. Actionable wrongs.

9. Bankruptcy and insolvency.

10. Trust and Trustees.

11. Administrators—general and official trustees.

11 A. Administration of justice, constitution and organisation of courts, except Supreme Court and High Courts.¹

12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.
14. Contempt of Court, but not including contempt of the Supreme Court
15. Vagrancy; nomadic and migratory tribes.
16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental defectives.
17. Prevention of cruelty to animals. 17 A. Forests.1
- 17B. Protection of wild animals and birds.1
18. Adulteration of foodstuffs and other goods.
19. Drugs and poisons, subject to the provisions of entry 59 of the List I with respect to opium.
20. Economic and social planning.
- 20A. Population control and family planning.'
21. Commercial and industrial monopolies, combines and trusts.
22. Trade unions; industrial and labour disputes.
23. Social security and social insurance; employment and unemployment.

1. Inserted by the Constitution (42nd Amendment) Act, 1976.

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List I—Union List.

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.
29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
30. Carriage of passengers and goods by railways, sea or air, or by national waterways in mechanically propelled vessels.
31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State . . . subject to legislation by the State, save insofar as Parliament by law otherwise provides.

33. Omitted.1

34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post Office Savings Bank.

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

1. Omitted by the Constitution (7th Amendment) Act, 1956.

List II—State List.

22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. Industries subject to the provisions of entries 7 and 521 of list I.

25. Gas and gas-works.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

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

28. Markets and fairs.

29. Omitted.

30. Money-lending and money-lenders; relief of agricultural indebtedness.

31. Inns and inn-keepers.

32. Incorporation, regulation and winding up of corporations, other than those specified in List I; and universities; unincorporated trading, literary, scientific, religious and other societies and associations, co-operative societies.

33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.

34. Betting and gambling.

1. Substituted by the Constitution (7th Amendment) Act, 1956.

List III—Concurrent List.

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

25. Education, including technical education, medical education and universities, subject to entries 63-66 of List I; vocational and technical training of labour.¹

26. Legal, medical and other professions.

27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.

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

29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

30. Vital statistics including registration of births and deaths.

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

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels and the rule of the road on such waterways, and the carriage of passengers and goods on and waterways subject to the provisions of list I with respect to national waterways.

1. Inserted by the Constitution (42nd Amendment) Act, 1976.

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

42. Inter-State trade and commerce.
43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.
44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
45. Banking.
46. Bills of exchange, cheques, promissory notes and other like instruments.
47. Insurance.
48. Stock exchanges and future markets.
49. Patents, inventions and designs; copyright; trade-marks and merchandise marks.
50. Establishment of standards of weight and measure.
51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
53. Regulation and development of oilfields and mineral oil resources, petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
35. Works, lands and buildings vested in or the possession of the State.
36. Omitted.1
37. Elections to the Legislatures of the State subject to the provisions of any law made by Parliament.
38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.
39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof and if there is a Legislative Council, of that council and of the members and

the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State.

41. State public services; State Public Service Commission.

42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

43. Public debt of the State.

44. Treasure trove.

45. Land revenue, including the assessment and collection for revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

1. Omitted by the Constitution (7th Amendment) Act, 1956.

33. Trade and commerce in, and the production, supply and distribution of,—

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

products;

(b) foodstuffs, including edible oilseeds and oils;

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

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

(e) raw jute.¹

33A. Weights and measures except establishment of standards.²

34. Price Control.

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

36. Factories.
37. Boilers.
38. Electricity.
39. Newspapers, books and printing presses.
40. Archaeological sites and remains other than those declared by or under law made by Parliament³ to be of national importance.
41. Custody, management and disposal of property (including agricultural land) declared by law to be avacuee property.

1. Substituted by the Constitution (3rd Amendment) Act, 1954.

2. Inserted by the Constitution (42nd Amendment) Act, 1976.

3. Substituted by the Constitution (7th Amendment) Act, 1956.

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List I—Union List.

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

56. Regulation and development of inter-State river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest

57. Fishing and fisheries beyond territorial waters.

58. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.

59. Cultivation, manufacture, and sale for export, of opium.

60. Sanctioning of cinematograph films for exhibition.

61. Industrial disputes concerning Union employees.

62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

List II—State List.

48. Estate duty in respect of Agricultural land.
 49. Taxes on lands and buildings.
 50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development
 51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :—
 - (a) alcoholic liquors for human consumption;
 - (b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
 52. Taxes on the entry of goods into a local area for consumption, use or sale therein.
 53. Taxes on the consumption or sale of electricity.
 54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.1
 55. Taxes on advertisements other than advertisements published in the newspapers.
 56. Taxes on goods and passengers carried by road or on inland waterways.
 57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of list III.
1. Substituted by the Constitution (7th Amendment) Act, 1956.

List III—Concurrent List.

42. Acquisition and requisitioning of property.¹
43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
44. Stamp duties other than duties on fees collected by means of judicial stamps, but not including rates of stamp duty.

45. Inquiries and statistics for the purposes of any of the matters specified in list II or list III.
 46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list
 47. Fees in respect of any of the matters in this List, but not including fees taken in any court
 1. Substituted by the Constitution (7th Amendment) Act, 1956.
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63. The Institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of Art. 371E1 and any other institution declared by Parliament by law to be an institution of national importance.
 64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be an institutions of national importance.
 65. Union agencies and institutions for—
 - (a) professional, vocational or technical training, including the training of police officers; or
 - (b) the promotion of special studies or research; or
 - (c) scientific or technical assistance in the investigation or detection of crime.
 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
 67. Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament1 to be of national importance.
 68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.
 69. Census.
 70. Union public services; all-India services; Union Public Service Commission.
 1. Words in italics inserted by the Constitution (32nd Amendment) Act, 1973.
 2. Substituted by the Constitution (7th Amendment) Act, 1956.
 58. Taxes on animals and boats.

59. Tolls.
60. Taxes on professions, trades, callings and employments
61. Capitation taxes.
62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
64. Offences against laws with respect to any of the matters in this List
65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List
66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

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List I—Union List.

71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.
72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.
73. Salaries and allowances of members or Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.
74. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.
75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.
76. Audit of the accounts of the Union and of the States.
77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken (herein; persons entitled to practise before the Supreme Court

List II—State List.

List III—Concurrent List.

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78. Constitution and organisation including vacations¹ of the High Court except provisions as to Officers and servants of High Courts; persons entitled to practise before the High Courts.

79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory²

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside the State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes on income other than agricultural in-come.

83. Duties of customs including export duties.

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

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

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

85. Corporation tax.

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

1. Inserted by the Constitution (15th Amendment) Act, 1963.

2. Substituted by the Constitution (7th Amendment) Act, 1956.

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List I—Union List.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agricultural land.
89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.
90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.
91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of landing, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.
92. Taxes on the sale or purchase of newspapers and on advertisements published therein.
- '92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
- 9ZB. Taxes on consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.
93. Offences against laws with respect to any of the matters in this List.
94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.

1. Inserted by the Constitution (6th Amendment) Act, 1956.

List II—State List.

List III—Concurrent List.

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95. Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken by any Court

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

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TABLE XX LANGUAGES [Arts. 344(1), 351, 8th Sch.]	
1. Assamese.	10. Marathi
2. Bengali.	11. Nepali1
3. Gujarati.	12. Oriya.

4. Hindi.	13. Punjabi.
5. Kannada.	14. Sanskrit.
6. Kashmiri.	15. Sindhi1
7. Konkani.1	16. Tamil.
8. Malayalam.	17. Telugu.
9. Manipuri1	18. Urdu.

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TABLE XXI PRESIDENT'S RULE IN STATES AND UNION TERRITORIES

Sl. No.	State/U.T.	No. of times President's rule imposed	Duration of President's rule	
			From	To
1	2	3	4	5
1.	Andhra Pradesh	2	15-11-1954	28-3-1955
			18-1-1973	10-12-1973
2.	Assam	4	12-12-1979	6-12-1980
			30-6-1981	13-1-1982
			19-3-1982	27-2-1983
			27-11-1990	30-6-1991
3.	Bihar	6	29-6-1968	26-2-1969
			4-7-1969	16-2-1970
			9-1-1972	19-3-1972
			30-4-1977	24-6-1977
			17-2-1980	8-6-1980
			28-3-1995	4-4-1995
			12-2-1999	8-3-1999
4.	Goa	1	10-2-1999	9-6-1999
5.	Gujarat	5	13-5-1971	17-3-1972

			9-2-1974	18-6-1975
			12-3-1976	24-12-1976
			17-2-1980	7-6-1980
			19-9-1996 1	23-10-1996
6.	Haryana	3	21-11-1967	21-5-1968
			30-4-1977	21-6-1977
			6-4-1991	23-6-1991
7.	Himachal Pradesh	2	30-4-1977	22-6-1977
			15-I2-1992]	3-12-1993
8.	Jammu and Kashmir	2	7-9-1986	6-11-1986
			19-7-1990	9-10-1996
9.	Karnataka	4	27-3-1971	20-3-1972
			31-12-1977	27-2-1978
			21-4-1989	20-11-1989
			10-10-1990	17-10-1990
10.	Kerala	9	23-3-1956	1-11-1956
			1-11-1956	5-4-1957
			31-7-1959	22-2-1960
			10-9-1964	24-3-1965
			24-3-1965	6-3-1967
			4-8-1970	3-10-1970

			5-12-1979	25-1-1980
			21-10-1981	28-12-1981
			17-3-1982	24-5-1982
11.	Madhya Pradesh	3	304-1977	23-6-1977
			17-2-1980	9-6-1980
			15-12-19922	7-12-1993
12.	Maharashtra	1	17-2-1980	9-6-1980
1	2	3	4	5
13.	Manipur	7	21-1-1972	20-3-1972
			28-3-1973	4-3-1974
			16-5-1977	29-6-1977
			14-11-1979	13-1-1980
			28-2-1981	19-6-1981
			7-1-1992	8-4-1992
			1-1-1994	13-12-1994
14.	Mizoram	1	7-9-1988	24-1-1989
15.	Nagaland	3	22-3-1975	25-11-1977
			7-8-1988	25-1-1989
			2-4-1992	22-2-1993
16.	Orissa	6	25-2-1961	23-6-1961
			11-1-1971	3-4-1971
			3-3-1973	6-3-1974
			16-12-1976	29-12-1976

			30-4-1977	6-6-1977
			17-2-1980	9-6-1980
17.	Patiala and East Punjab States Union (PEPSU)	1	4-3-1953	7-3-1954
18.	Punjab	8	20-6-1951	17-4-1952
			5-7-1966	1-11-1966
			23-8-1968	17-2-1969
			15-6-1971	17-3-1972
			30-4-1977	20-6-1977
			17-2-1980	7-6-1980
			6-10-1983	29-9-1985
			11-5-1987	25-2-1992
19.	Rajasthan	4	13-3-1967	264-1967
			30-4-1977	22-6-1977
			17-2-1980	6-6-1980
			15-12-19922	4-12-1993
20.	Sikkim	2	18-8-1979	17-10-1979
			25-5-1984	8-3-1985
21.	Tamil Nadu	4	31-1-1976	30-6-1977
			17-2-1980	9-6-1980
			30-1-1988	27-1-1989
			30-1-1991	24-6-1992
22.	Tripura	3	21-1-1972	20-3-1972
			5-11-1977	4-1-1978
			12-3-19933	9-4-1993

23.	Uttar Pradesh	9	25-2-1968	26-2-1969
			1-10-1970	18-10-1970
			13-6-1973	8-11-1973
			30-11-1975	21-1-1976
			30-4-1977	23-6-1977
			17-2-1980	9-6-1980
			6-12-1992	4-12-1993
			18-10-1995	17-10-1996
			18-10-1996	21-3-1997
1	2	3	4	5
24.	West Bengal	4	20-2-1968	25-2-1969
			19-3-1970	2-4-1971
			29-6-1971	20-3-1972
			304-1977	21-6-1977
25.	Arunachal Pradesh	1	3-11-1979	18-1-1980
26.	Goa	3	3-12-1966	5-4-1967
			28-4-1979	16-1-1980
			14-12-1990	25-1-1991
27.	Meghalaya	1	10-10-1991	5-2-1992
28.	Mizoram	2	11-5-1977	2-6-1978
			11-11-1978	8-5-1979
29.	Pondicherry	6	18-9-1968	17-3-1969
			3-1-1974	6-3-1974
			28-3-1974	2-7-1977

			12-11-1978	16-1-1980
			24-6-1983	16-3-1985
			12-1-1991	4-7-1991
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1. Writ Petition challenging the Proclamation is pending before the Gujarat High Court.
2. Writ Petition challenging Proclamation brought before the Supreme Court has been dismissed and the validity of these Proclamations have been upheld by a 9Judge Bench [Bommai v. Union of India, A. 1994 S.C. 1918 (paras. 91(x), 366)].
3. As a stop-gap arrangement to enable a fresh election of the State Assembly, which had not taken place before the expiry of its term.
4. On ground of failure of BJ.P. Government to prevent demolition of the disputed Babri Masjid structure.
5. On the B.S.P. Government of Mayavati losing majority on the withdrawal of the support of the BJ.P.
6. On the failure of any Party to be able to form a Government. A writ petition challenging the proclamation was allowed by the Allahabad High Court. An appeal is pending in the Supreme Court {January 1997}.

Administration Bureaucracy and Politics

With the increase in the range and nature of activities undertaken by the modern state, the role complexity and importance of administration and bureaucracy has increased every where. Today the civil service is a key instrument not only for repressive and extractive activities of the government but also for their efforts to transform and develop societies. Obviously, in India also, despite alternatives which have been suggested here and there, public bureaucracy retains the central place in the politico-administrative set-up of the country. Both as an organisation and as an instrument of management, the administration in India handles the bulk of the country's programmes of development and policy implementation.

Needless to say, in order to be an agent of change and development, public bureaucracy must have the capacity to forecast, project and understand the direction and trends in its environment, to plan for necessary or desirable changes, to adopt itself to changes demanded or planned by the political system and to innovate on its own. In other words, before embarking on the gigantic venture of initiating and administering social and economic changes, the bureaucracy must itself undergo structural and attitudinal changes so as to acquire the right type of perception, attitude, change orientation, values and skills essential for the success of development tasks. How far has

the bureaucracy in India played this role? What have been its strains and problems? and what is its nature in general ? These are important questions today with regard to an overall political process and development strategy.

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Bureaucratic Legacy in India

India has a fairly long tradition of powerful bureaucratic functionaries. The patrimonial bureaucrats of Moghul India (such as Fauzdars or Subadars) had substantial power, and British rule continued this tradition of a strong service. The civil servants were recruited from the traditional literate groups in the population, which unlike in Europe had little organic relationship with trade or industry. The expansion in the size of the professional class in the colonial regime was liked more to educational, judicial and administrative developments than to technological or industrial progress.¹ The topmost service in colonial administration was Indian civil service. The Indian Civil Service (ICS) consisted of a small administrative aristocracy, generalist and non-technical in character, highly educated and carefully, selected by a difficult competitive examination, remarkably adaptable, exceptionally devoted to duty, imbued with an intense esprit de corps, and perhaps most important of all, Pan-Indian rather than regional or provincial in its loyalties.

It did possess strength and efficiency, coupled with aloofness, exclusiveness and class-consciousness. It was a set of hierarchies, a close well-knit administrative service, designed to maintain the stability and continuity of the British power. It was from top to bottom authoritarian, though benevolent in intentions, primarily devised for maintenance of law and order and collection of revenues, it was a government by civil servants, who were not responsible to the people over whom they ruled. Their colonial and paternalistic attitude towards the local people was based on their social and professional prejudices, with little or no involvement in the development, it was fundamentally non-action oriented.

This tiny body of senior-men ran the affairs of a vast country through a mass of not very highly motivated minor bureaucrats educated in the arts of absorption and regimentation rather than those of thinking, and trained mainly in the literal application of a formidable collection of detailed regulations, hopefully providing for every possible contingency. Correctness rather than initiative was its watchword. Despite the introduction of limited self-government, the administrator, at least upto 1946 regarded himself as master. The nationalist politicians, from Nehru downwards, presented him with a law and order problem.

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Whatever his private opinions may have been, his professional loyalties were to the British raj.² Obviously, the Indian Civil Service was always looked upon by the Indians as the most despised and notorious instrument of foreign exploitation.

The leaders of the Nationalist Movement were quite critical of this administration and bureaucracy and saw it as an instrument of colonial exploitation and oppression. Jawaharlal

Nehru, looked upon bureaucratic mechanisms in general and the Indian Civil Service in particular, with a degree of scepticism. And Patel, ever since 1927-28 when he had convincingly witnessed the land revenues and police administration in Bardoli, was all too aware of its inherent limitations. Besides, both Nehru and Patel, along with Prasad, Azad and other leaders of that generation had been uncompromising adversaries of the "crisis administration" in the war years of 1939-45.

Administrative Set-up After Independence

After independence, the total environment and ethos of the country were expected to undergo a change. The emphasis on government tasks was to shift from mere care and maintenance of law and order to social welfare and progress. Therefore a suitable administrative arrangement was called for to plan and implement the expected developmental tasks on the one hand and meet the immediate mounting challenges created by the partition of the sub-continent of India on the other. Freedom movement, however, inspite of its suspicion and criticism of colonial administration, had not thrown up alternative forms of organization. The only model that the movement had thrown up was the Gandhian model which did not enjoy support of even the congress party, as far as its applicability was concerned. Thus, the constituent assembly did not carry a serious debate about the changes to be brought about in the administrative system.

In the constituent assembly there were a couple of dissenting notes. Mahavir Tyagi lamented that "the country fought for freedom not against the colour but against the bureaucracy. Now the very same bureaucracy stands as it is". These isolated and lonely voices had no impact on the constituent assembly. The leadership, which now acquired power with its social background and orientation now saw the virtues of an Indian

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equivalent to the British administrative class both as a source of much needed administrative competence and as an effective means of cementing national unity. Sardar Vallabhai Patel, as Deputy Prime Minister and Home Minister particularly insisted on continuing with the old system. He told the Constituent Assembly, " I have worked with them during this difficult period remove them and I see nothing but a picture of chaos all over the country." Even Nehru, who had once denounced the ICS for its "spirit of Authoritarianism" declared "the old distinctions and differences are gone..... In the difficult days ahead our services and experts have a vital role to play and we invite them to do so as comrades in the service of India."

Thus, whatever changes came about subsequently, were in the form of piecemeal and minimal reforms rather than a comprehensive review of radical type. In fact the privileged conditions of service of the officers of the ICS were protected by constitutional guarantees. The successor Indian Administrative Service (IAS) established by Patel (with its own terms and conditions of service also guaranteed under the constitution) retained the structure and style of its elitist forerunner, perpetuating a national administrative system that in numbers and outlook was more suitable to carrying out the narrow colonial functions of law and order than the broad responsibilities for economic development of an independent government.

The Administrative Structure

The structure of the public services, the "steel frame" of the British raj, has thus remained largely intact. The services are characterized by "open entry based on academic achievement; elaborate training arrangements; permanence of tenure; responsible, generalist posts at central, provincial and district levels reserved for members of the elite cadre alone; a regular, graduated scale of pay with pension and other benefits; and a system of promotion and frequent transfers based predominantly on seniority and partly on merit. The services are all-India services. Each state has its own services, both generalist and specialist. These are recruited by the states public service commissions. Structurally and organisationally, the states services are very similar to the All-India and central services. For central service, personnel for the more technical ones are separately

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recruited on the basis of relevant qualifications while the others, although operating independently, rely on a common competitive examination. One of the characteristics of these services (which is paralleled by the corresponding services at the state level) is a strong tendency to develop a caste-like exclusiveness, which is inevitably accompanied by considerable and sometimes bitter inter-service jealousy.

The constitution specified two All-India services, the Indian Administrative Services and the Indian Police Service, but additional all-India services can be created by parliament, provided there is approval by two-thirds of the Rajya Sabha. With concern, for national integration the states reorganisation commission recommended in 1955 the creation of three new All-India services—engineering, health and medical and forestry. The states have generally opposed the creation of new all-India services. They have argued that the higher pay for All-India officers would impose a financial strain. But in fact, the states resist sharing control over the services with the central government. They also fear that local candidates may fail in All-India competition and that the posts will be filled by candidates from outside the state.³

Although centrally recruited by competitive examination organised by the Union Public Service Commission, the officers of All India Services are assigned to state cadres, just as in the British days they would have been assigned to provincial cadre. To this cadre an officer remains attached, at least in theory, for the rest of his official life. When serving the union government he is on assignment to the centre with the agreement of the state concerned.

The Union Public Service Commission, is responsible for all matters relating to recruitment, appointment, transfers, and promotions and its advice is generally decisive. The commission also concerns itself with disciplinary matters affecting members of the services and functions to protect the services and the merit system from political interference. Its relations with the government are co-ordinated by the Minister of Home Affairs. The process of recruitment and training serves to reinforce the elitist character of the IAS. Approximately 25 per cent of the yearly recruitment are promoted from the state services, but the remainder is directly recruited through competitive

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examinations. Although once the highest positions to which one might aspire, the IAS has lost much of its attractiveness for India's brightes youth, who may now find business offering both greater prestige and financial reward. The service continues to be dominated, nevertheless, by the urban educated and wealthy classes.⁴

Socio-economic Background of Bureaucracy

Empirical studies confirm the elitist character of our higher civil services. With the expansion of the educational facilities, the boys and girls of the middle and lower middle classes have also been entering the administrative services. Vast increase in the functions of the government is partly responsible for broadening the social base of the administration. But the entry of boys and girls coming from the lower classes are thwarted because the norms and methods which were followed during the colonial period, have been bodily lifted and adopted even after 1947. This approach has prevented the administrative services from becoming 'non-elitist' nor have they permitted democratisation of the services. Consequently those who man the top bureaucracy "generally come from the wealthy, urban and educational classes". Their parents belong to the upper strata of society and are engaged in the modern professions such as law, engineering, medicine and teaching in the universities.⁵ Their origin quite often decides their approach. A study of the IAS probationers has revealed that a considerable number of the new entrants in the IAS do not believe in equality, democracy, secularism, economic planning or reservation policy.⁶ They maintain very good relations with the business community. Many of the retired civil servants get positions in the large lobbyists of business houses. As Stanlay Kochanek says "Such people are selected because of their knowledge of government procedure or their ability to gain access and because of former association with government, personal contacts based on school ties, and particularistic loyalties of caste, religion, community, and language. Among the specially recruited personnel are former ICS and IAS officers, former members of the military or other government civil services.⁷

Even at the rural level, the lower level bureaucrats whose work is of crucial importance, do not have sufficient rural

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background. According to Charles Bettleheim, "Most of them (village level workers) come from the urban petty bourgeoisie. They, therefore, have some difficulty in making contact with the peasants. There seems to have been a tendency recently to recruit the better off peasants' sons who have a fair level of education. This is a step forward, but the essential problem of how to get through to the peasantry has not been solved. Because of their social origins, most village level workers were inclined to help the richer peasantry and ignore the others.

Of late as combined effect of adult suffrage, constitutional directives and spread of education there has been significant change in the social composition of the bureaucracy. With nearly one fourth of appointments reserved for the Scheduled castes and tribes and with reservations also for the "other backward classes" (OBCs) there is now substantial and progressively increasing,

representation of the socially and economically backward classes in the bureaucracy. However it is still not satisfactory. Moreover scheduled castes and tribes coming to higher services come from better off families within these castes and form an elite by themselves. They are motivated by an understandable inferiority complex, derived from their original social position, which tells them that a civil servant enjoys privileges irrespective of birth. After gaining access to bureaucratic elite, these people quickly adopt with a vengeance all the traits and characteristics of their new found status. They become more snobbish than the upper middle class officials because they have to compensate for childhood and adolescent snubs; they also sever all connections with ordinary people, often being helped by matrimonial arrangements which ease their transformation into the new ruling class. In these circumstances the poor Indian masses feel alienated by the bureaucracy completely.

Democracy, Development and Role of Bureaucracy

After independence, though the system of bureaucracy continues to exist in the same shape as it was established by the British, it functions in a context which is, in some fundamental respects, different from that of the British colonial rule. It has now to function under democratic political leadership and operate within the framework of responsible cabinets, questioning legislatures, ever critical political parties and highly

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demanding pressure groups. It has to be sensitive to the policies laid down by the cabinets and legislatures, the values and purpose of the leadership and the interests and pressures of political parties and groups . The constitutional commitment to an egalitarian value and state and its planned development in the political colonial situation also called for the bureaucracy to assume an autonomous economic role euphemistically to promote egalitarianism, to influence income distribution and to alleviate poverty.

In view of this and important consequence of the critical decision to opt for the continuity of the old administrative system was the constant demand that the administrators change their outlook and bring changes in the administrative culture to suit the new situation of democracy and planned development. The expectation was that a change of heart would occur and the individual bureaucrat would reorient himself from the colonial outlook and transfer his loyalty to a democratically elected political apparatus. Kuldip Mathur suggests that to a certain extent, there, expectations were fulfilled; during the days of partition, the administrators were fully committed to work for the unity and integrity of the country when it was threatened the most. But that was a situation of an extra-ordinary nature.⁸ However, with regard to administrative ethos of being rulers there was little change. And in many ways it continues to be so. In some respects it has become reinforced as a result of the decline in the quality of secondary and higher education and the increase in the severity of competition among the growing mass of the half educated for limited number of government jobs. Hence, despite the development-mindedness of many of the newly-recruited top-level administrators and the capacity shown by some of the older ones to take on new and unfamiliar tasks, together with some rather half-hearted attempts to implement the impeccable recommendations of innumerable administrative reforms commissions, both central and state, administration remains, to a remarkable extent, stuck in its pre-Independence posture.

This is the despair of the social and economic planner, who are always proclaiming, although with decreasing hopefulness the urgent need to gear up the administrative machine so as to make it a more efficient instrument for the attainment of their goals.

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The dead weight of tradition is felt from the top to the bottom of the administrative hierarchy. For instance, the organisation of the secretariat, where, both at the centre and in the states, the most vital of administrative decisions are taken, is not substantially different from what it was in the British days, except to the extent that with the expansion of government functions, particularly in the field of social and economic development, it has become more cumbersome and complicated. Aloofness from ordinary people is generally said to be characteristic, not only of the ICS-IAS, but of administrators generally. There has been little change in the actual style, except to the extent that administrators' at all levels have, of necessity acquired the habit of treating elected politicians with at least outward respect.

On the other hand in the framework of planning the necessity of "development administration" or "welfare bureaucracy" has justified an enormous growth and proliferation of bureaucracy. Thus the quantum of total employees in the administration has increased many fold in the last four decades. The Indian civil services is one of the largest in the world in terms of its size, spatial spread, multilevel operation and sectorial penetration. The expansion of public bureaucracy has been accompanied by a proliferation of government regulations, both social and economic in nature.

These increases both in number of personnel and regulations, rather than becoming instruments of change and development, in fact have proved to be hurdles in the task. It is pointed out that of the many variables affecting the implementation of planned goals perhaps the most significant is the bureaucratic machinery, whose function is to translate planned goals into action. The non-implementation of land ceiling acts involving social and economic principles of agrarian reform is due to the fact that the administrative machinery particularly at the lower levels which is responsible for the implementation of all legislative measures is either lethargic or indifferent or hostile or corrupt. Of course for failure of land reforms, the bureaucracy cannot be squarely held responsible. In many cases non implementation is due to lack of political will in the corridors of powers. Yet the role of administration in this regard remains significant.

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There are several reasons as to why changes in styles have been more than very gradual. An obvious one is the fact that what is loosely termed casteism in the administration is constantly stimulated and sustained and is still the predominant feature of the whole social order. Another is to be found in recruitment of the IAS (and, to a considerable extent, in the other superior services both at the centre and in the states) from a very narrow social stratum. As has been mentioned above, typically, the top administrator comes from an urban family which enjoys something that approaches a western standard of living and has at least some of the elements of a western outlook. When to all this is added a need for proficiency in English, as the main all-India language for mutual communication among the educated, it is clear that one has a public service

which at least in its higher echelons, is hardly more representative than it was in the British days. Given the actual distribution of both opportunities and expectations, it is inevitable that this should be so.⁹

Another factor is of compartmentalisation. Various departments and organisations have been created to deal with the various aspects of the administration. The separate services, with their wide disparity in pay scales, have become rigid and self-conscious "classes" and have stimulated jealousies and resentment. According to Paul Appleby "there is too much and too constant consciousness of rank, class, title and service membership, too little consciousness of membership in the public service, and too little consciousness turning on particular job responsibilities. Various services do not co-operate with each other. They sometimes operate under a cloak of secrecy in a situation which often requires openness, consultation and coordination.

Further, prevalence of formalism has served to stifle bureaucratic initiative and imagination. Procedure involves what Appleby has called "the hierarchical movement of paper." Unwilling to accept responsibility even for minor decisions, petty bureaucrats refer the files, nearly tied in "red tapes", to a higher level. In India, it is said, "the British introduced red tape, but we have perfected it. "Responsibility is diluted in delay and inaction. "Red tape becomes a technique of self-preservation", writes Kothari, "and reverence for traditional

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forms is matched only by attachment to strict routine and unwholesome preoccupation with questions of accountability." Appleby argues, that it is not a question of too much hierarchy, but rather that there is an irregular hierarchy, disjointed and impeding effective communication.¹⁰

One major element in the effective operation and in the public image of bureaucracy is corruption. Corruption may be greatly exaggerated in India. According to some commentators administrative corruption is almost unavoidable in developing societies, where the Western type bureaucratic norms have not become fully, internalised, and when the social system is such that the distinction between corruption and loyalties associated with caste, community and extended family cannot easily be made. It is also argued that economically frustrated individuals seek a scapegoat in official misbehaviour. But as A.D.Gorwala argues, "the psychological atmosphere produced by the persistent and unfavourable comment is itself the course of further moral deterioration, for people will begin to adopt their methods, even for securing legitimate right to what they believe to be the tendency of men in power and office. Moreover, the public may decry corruption, but traditional attitudes often condone it and fatalism, may lead many to accept it as inevitable. Nepotism is officially condemned, but in traditional terms it may be viewed as loyalty to one's family, friends and community.¹⁶ Particularly when corruption is so prevalent at political level, the scope for corruption at administrative level, where the power of a public servant far exceeds his income, is much greater.

It, thus becomes clear that, the civil service has to undergo radical structural, procedural and attitudinal changes if it has to serve as an effective instrument of change and progress in a developing society. The civil service has to cultivate much wider social awareness and

responsiveness as well as social base apart from the traditional virtues of integrity, functional efficiency and a sense of fair play and impartiality. But the bureaucracy does not function in vacuum. Particularly in a democratic set-up it functions in the context of political process.

Bureaucracy and Politics

It has been pointed out that in the political administrative

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system we have opted for in constitution, there is a role for the political side and equally, one for the administrative. It is at the interface between the two sub-systems the questions of relationship arise. If both sub-systems are in a state of health their relationship with each other cannot but be healthy, imperative and related. But if both are sick their relationship is bound to be sick too, and that, unfortunately, is the case today.¹²

In 1947 India became a republic, casting aside the autocratic monarchical doctrines and administrative state of king emperor and viceroys. A democracy, where for the first time the political masters; those who would represent and govern, chosen on the basis of universal suffrage, in a welfare and socialist state, committed not only to economic growth and self reliance but also social justice and national power were made responsible to people. With the passage of time there has been a marked increase in the change propensity of the people. The urban section, particularly, is prone to changing the government for better and timely services. Even the rural people, of late are displaying much more desire to participate in local political activities simply because of the desire to extract real benefits from the government. This has led to a power struggle between the elected representatives and the bureaucracy of deciding key political issues relating to development administration. The bureaucrat on the one hand, claims the sole authority to determine and administer the various governmental programmes. On the other hand, the political leaders take a stand that they alone are the representatives of the people and thus know, what is desirable, suitable and acceptable to their people.

The civil servants have expressed that they are prepared to do their best but are prevented from discharging their functions because of political interference. They find that particularly after the introduction of the Panchayati Raj "Political Pull" had increased. Political interference in matters of appointment, promotion and transfer and charges of favouritism, nepotism and corruption against the political leadership have been some of the most important factors causing frustration among the bureaucrats. It is also pointed that whereas in parliamentary democracy the ultimate responsibility for policies rests with the minister and not with the civil servants, in case of detection of error or anomaly in policy formulation and decision making the

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entire responsibility is thrown upon the bureaucrats. It is easy for the political leaders to blame the bureaucrats for their own ignorant or negligent or otherwise motivated actions.

In the initial years of planning, criticism of bureaucracy for failing at development tasks was muted. Nehru provided an optimistic future and a stable political environment. ICS and the IAS were considered Nehru's allies. But the situation changed drastically after his death. The congress party, while continuing at the centre, was considerably weakened and many states went out of its control. After the congress split in 1969, issues of inability of the bureaucracy to implement socialist goals of the party were brought to the top of the political agenda and the doctrine of neutrality was challenged. Neutrality was what had helped the British civil service to transfer its allegiance to the new state. The congress party demanded a committed civil service and now argued that the present bureaucracy under the orthodox and conservative upper class prejudices can hardly be expected to meet the requirements of social and economic change along socialist lines. A national debate began and civil servants actively participated to defend themselves. The civil service gained a political image, but significantly, no drastic restructuring was done. From then, on however, the civil service was no more faceless.¹³

The political role of civil servants was further identified by the Shah commission while inquiring into the excesses of the Emergency during 1975-77. Some senior civil servants were clearly identified as owing allegiance to the congress party (read Mrs. Gandhi). Janata government further muddied the doctrinal waters. While it meant to restore the doctrine and practice of neutrality the Janata government favoured not just upright professionals but also those committed to its own people and measures. Some of its ministers confused good ends with partisan advantage and correct procedure with victimization. When Mrs. Gandhi returned to power in 1980, her party government restored to office and favour those whom Janata had found most unsuitable. As India entered the 1980s and victims became heroes and heroes victims, all three doctrines—neutrality, commitment and loyalty—had to be reargued in the light of transformed historical context.¹⁴

In 1986, the Rajiv Gandhi government introduced measures

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to address the professional quality of the services and insulate them from inappropriate political pressures. Many of these measures were based on recommendations of the Administrative Reforms Commission of 1966. The government proposed to prevent frequent transfers of officers, to protect them against appropriation by local interests to encourage specialization, and to break the monopoly of the IAS on the highest positions by opening alternative recruitment channels to high quality candidates from technical services and the non-government sector.¹⁵ This experiment however, was short lived and soon bureaucrats were told to be complaisant. In this some civil servants, who in the earlier regimes have tasted the blood by being closer to political leadership, also played an active role. Now the change of administrators with the change of party, particularly at state level, has become a normal behaviour. The result, according to Kuldip Mathur, is that, while little restructuring of administration has taken place, the values of neutrality and impartiality, which were considered the identifying characteristics of the bureaucracy , have became tarnished.¹⁶ In actual practice the commitments being degenerated to compliance which has resulted in the increasing politicisation of the administration. The politicisation has been the result of a relentless pursuit of political power at a cost, if necessary, of the existing norms and standards of politico-administrative relationship. Often the political

leaders have sought to preserve their power by controlling the apparatus. Politicisation of administration has been a phenomenon of unprecedented character and has permeated all levels from the union cabinet down to the Gram Panchayat.

Politician Bureaucrat Nexus

All the above developments have finally given rise to the phenomenon of the growth of a nexus between politicians and civil servants. One finds increasing instances of such relationships based on considerations of "mutuality of benefit". Senior civil servants are increasingly getting aligned with individual politicians. Alternatively senior civil servants are withdrawing into a shell and doing the minimum expected of them. There has also emerged the phenomenon of civil servants entering active politics after retirement and in some cases even before

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retirement. While the phenomenon of retired civil servants joining politics by itself cannot be considered undesirable it does express impropriety mainly because of the proximity between the dates of retirement and the dates of active entry into politics. It appears that some discussion may have taken place between the officers concerned and political representatives. Result is that a rule-bound authoritarian bureaucracy of the past has been succeeded by one prone to be too pliable. Particularly at the ground level it is willing to bend rules where they exist, or to violate prescribed principles for venal or other discreditable reasons, not out of human consideration or those of equity.¹⁷ In terms of working of the political system it has shown following consequences.

1. The constitutional sanctity of various institutions such as the civil service, the judiciary, parliament etc. have been violated with impunity.
2. The rapid growth of government functions has given wide, discretionary powers to the politicians and civil servants. These, by and large , fall outside the range of parliamentary scrutiny resulting in misuse.
3. The earlier fears of a conservative bureaucracy acting as impediments in the path of elected representatives of the people have turned out to be unfounded .The present experience suggests that the lure of career advancement has demolished earlier inhibitions resulting in a largely compliant bureaucracy. Indeed, under Rajiv Gandhi, the bureaucracy became an indispensable part of the larger ruling party organisation. The fears of a widening gap between the values of politicians and civil servants have not been borne out in practice, and there appears to have been a remarkable convergence of objective.¹⁸

In view of these it is being suggested that in order to restore the ideal of responsive and responsible governance and accelerate a meaningful process of development certain hard options in terms of reforms in the bureaucracy will have to be exercised in the not too distant future.

Need for Reforms

Whatever be the theoretical debates and reasons the fact of

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the situation today is that existing bureaucratic arrangements in the country have proved unsatisfactory. Nirmal Muharji suggests that the proverbial man in the street would perhaps regard this as a gross understatement ... There is little doubt that the common man considers bureaucrats as responsible for the sorry plight of the people and the country as the political class.¹⁹ While it is true that overall decay in political process in the country has contributed significantly in this image of the bureaucracy there has also been a basic failure on the part of the bureaucracy which has led to the present situation in the administration. As Administrative Reforms Commission (1969) points out there has been a recognisable fall in service standards for which full responsibility must be accepted by the heads of administration. "There is no valid explanation for failure to exercise supervision, for various instances of administrative slackness and for tacit acceptance of the present state of administrative machinery by a fraternity who had seen it in a better form in the past. While, this allegation is correct to a great extent there is also the fact that political interference over the administrative head in service matters, incapacity to tolerate unpalatable advice, and a feeling in the districts that the view of the local bosses about them was a determining factor affecting their future, have altogether resulted in general fall in the standard of administration.

According to Prem Shankar Jha what is needed is a root and branch reform of the administrative system. If it is to be made more efficient the scope of its responsibilities must be drastically reduced, while the number of people with decision making power is greatly increased. Jha points out that as a society modernises, needs multiply and the number and variety of power centres—political, economic and social—increase rapidly. Thus the number of points at which the government interacts with the public regulate or promote economic and social activities, increase in what is virtually a geometric progression. To cope with this the administration system needs to be decentralised, with more and not less people empowered to take the necessary decisions. As the number of contacts between the government and public increases, it becomes necessary to replace case by case sanction with government by exception. This means that the government must frame precise

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rules and let people get on with what they wish to do so long as they conform to them. The government then comes into picture only when those rules are broken.²⁰

S.N. Jha suggests for this the application of concept of "representative bureaucracy", which suggests internal control i.e. ensuring such a composition of bureaucracy that is self-regulating and responsive. Briefly stated, the theory of representative bureaucracy advocates that the socio-economic composition of bureaucracy should resemble the society as a whole and every social group should have its own spokesmen in the bureaucracy to guard" the group interest. This theory is based on assumption that bureaucrats from a particular social group and share the attitudes, values and opinions of that group, which in turn gets reflected in their administrative roles. This "developmental sequence" relates social origin with the process of socialisation and

also group specific attitudes with behaviour. Critical extensions of this theory have struck precautions at every connecting link of the sequence and have often contributed explanatory and causal factors.²¹

While talking of necessary changes and reforms R.B.Jain and O.P. Dwivedi suggest that it must be remembered that administrative or bureaucratic changes needed for development purposes appear in a much broader context than conventional organizational reform. Government effectiveness involves action, programmes, promotion and ideology, even when they refer to bureaucracy alone, one of the ways for a government to gain bureaucratic approval of developmental goals is to give them social and political value. A revitalized and comparative rural leadership can have important influences on the attitudes and behaviour of the civil servants engaged in nation building activities.

In this context Jain and Dwivedi point out that a recent study on "Bureaucracy and Development Administration in the Indian context" suggests that (a) the higher levels of bureaucracy should be politicalized and integrated with the political system, (b) People's institutions should be given more say in developmental functions and Panchayats should be developed as a part of the administrative apparatus rather than as political institutions, (c) voluntary organizations in fields like education, health, agriculture, small scale industry should be developed as

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instruments of development efforts . Cooperatives can be utilized as less expensive organs of efficient implementation and development, and (d) People's committees could be set up functionally etc. in aggregate areas to ensure greater involvement of the people.²²

Recent discussion also show considerable awareness of the need to view administrative reform as sub-system of a wider social system which includes a political system. The interactions between and among administrative and political sub-system are crucial and to a large extent determine the setting up of objectives , goals, strategies and probabilities of the success of the implementation of the administrative reform proposals. Experience of some developing countries point to a dilemma which has not been properly dealt with as yet. On the one hand there is increasingly a growing need to undertake comprehensive reform programmes to keep pace with complex social, economic and political situation which most developing countries must cope with in order to survive let alone prosper. Comprehensive reforms, in practice, have been found to be extremely difficult to implement of the other.²³

In this context many a times it is being suggested that from the beginning of 1990s with the dissolution of "licence-permit ray" as a result of economic reforms, the process of disempowerment of the Indian bureaucracy has finally began. However S.K.Das raises the question, can the bureaucracy ever be dismantled? For answer he quotes Max Weber saying. "Once it is fully established, bureaucracy is among those social structures, which are the hardest to destroy.... And where the bureaucratisation of administration has been completely carried through, a form of power relation is established that is practically unshatterable... The ruled for their part cannot dispense with or replace the bureaucratic apparatus of authority once it exists."²⁴ Nirmal Mukerjee, however, suggests that it is only a question of time before the

bureaucratic apparatus feels the squeeze. Devolution on the one hand and deregulation and privatization on the other are inescapable slimming diets for the bloated bureaucracies of the centre and the states.²⁵

So far no such process is visible. Bureaucracy continues to be all powerful as far as people are concerned. With regard to politicians the nexus between the two not only continues but it

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is being widened by inclusion of criminals in that. In any case in a complex situation like that of India liberalisation of economy is just one aspect. What is required here is comprehensive exercise of political restructuring and change in environment. According to K.N. Bhutani the creation of appropriate environment for the facilitation of the process of reform implementation pre-supposes the creation, substance and spread of appropriate attitudes in men who matter most—men who occupy positions in the administrative hierarchy from where the consequences of good or bad leadership emerge and permeate the entire structure. Bhutani suggests awareness and understanding of four essential requirements. These are implementors must get involved in the process as early as practicable; an adequate agency for follow up action must be established; the urge to improve must come from within (whether from an individual or from the organisation where reforms is introduced) to have lasting improvements; and extreme care must be taken in the choice and training of personnel meant to undertake the implementation of reforms.²⁶

In the final analysis for a balanced relationship between bureaucracy and political leadership and development imperative is required a conducive political culture and administrative ethos. This is not the place to discuss these but as yet both political culture and administrative ethos are moving towards a direction of decay of institutional order. This decay needs to be checked first of all if we want to move towards any development.

Poverty and Politics

The major paradox and contradiction of today's India is the coexistence of growth and poverty. In the early eighties India ranked, according to World Development Reports, published by the World Bank, 8th in the global count for overall industrial production, 7th in iron-ore, 6th in coal and manganese, 4th in grain, 3rd in railways (passenger plus tonnage per km.) and 3rd also in the number of scientific and technical personnel. The other part of the table is that the process of industrialisation is still far behind the requisite level of development that could provide the basis for a self reliant and self generating economy. Thus while India is 15th in rank in terms of GNP, it has the dubious distinction of being 106th in terms of per capita income. While the net national product at constant prices has increased by 165 per cent, the per capita share has increased by only 45%. Hence the pattern is of growth and poverty, and not growth against poverty. Growth has not resulted in the intended socio-economic transformation—the dream of national

development based on distributive justice. Obviously when we talk of poverty and the poor we are just not referring to the poverty of the country alone but more of the people occupying more than lower half of the population. Of course range of poverty varies from state to state but the phenomenon is widespread.

Measurement of Poverty

The poverty is defined in many ways in contemporary literature. No specific definition or measurement is fool-proof. However, the most commonly used measurement in India is from the consumption angle, whether the money for consumption available to a household or an individual enables to buy food, satisfying a minimum calorie-value. The calorie norms are stipulated by rural and urban per capita, determined

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by the calorie requirement of an individual given his/her gender, age and occupation to lead an active life.¹ Accordingly, it has been estimated that on an average, an Indian in rural areas needs 2400 calories per day and in urban areas 2200 calories.

In recent years, the calorie intake-based criterion has been subject to criticisms. Some observers point that there are several other, perhaps equally important, forms of poverty such as poverty of illiteracy, of education, of health, of housing, and of industrial consumer goods. For instance, Marris David has developed the physical quality of life Index (PQLI) to measure the extent to which minimum human needs are being met. Of many intercorrelated indicators considered, three relatively independent and widely available ones were chosen: infant mortality per thousand live births, life expectancy at age one, and literacy of those aged 15 and over. These three indexes were averaged to produce PQLI. When applied to the incidence of poverty in India, the PQLI tells a different story than consumption expenditure on food.² Anyhow, in general planning commission and most scholars on poverty continue to determine the extent of poverty on the expenditure level for calorie consumption.

At independent, it was clear that in terms of per capita income, India was one of the poorest countries with National per capita income of Rs. 246.9 per year for 1948-49. The extent of poverty and inequalities within this at individual or household level, however, was not clear at that time. In 1971, V.M. Dandekar and N. Rath pointed out that according to 1960-61 prices, about 38 per cent of rural population and nearly 58 per cent of the urban lived below the poverty line in that year.³

According to this criteria in an important World Bank sponsored study published in 1978 Montek Singh Ahluwalia and Ishar Ahluwalia established that between 1960-61 and 1973-74, the incident of poverty had neither increased nor decreased, although there had been considerable fluctuations up and down in the interim. Using the calorie expenditure criteria, the sixth plan found expenditure requirement of Rs. 65 per month for rural areas and Rs. 75 per month for urban areas in 1977-78 prices. On this basis, it was estimated that 50.82 per cent of rural people and 48.13 per cent of urban people, making up a total population of 317 million lived below poverty line. For the

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Seventh Five Year Plan (1985-90), the updated poverty line calculated on the basis of the calorie requirement recognised need of an annual household income of Rs. 6400 in rural areas and Rs. 7,300 in the urban areas. Accordingly, in 1983, 44.4 per cent of the rural population was below poverty line. According to Seventh Plan document over all percentage of people below poverty line in 1983-84 was 37.4. According to official figures percentage of the families below the poverty line was 33 in 1987-88. National sample survey data for the period January-December 1992 put the figure close to 41 per cent and according to various estimates, the percentage at the end of 1995 was 49.61.

With poverty level as high as it is, and virtually refusing to contract despite the much talked budgetary allocations and developmental efforts to bring about a perceptible change, the question of the capacity of political system and relevance of adopted development strategy becomes important. Why after 45 years of developmental efforts, the situation is so? Is it simply because of failures of policies or there is some thing more to it? To understand this, let us first look at the policies.

Poverty Alleviation Programmes

Poverty is a complex phenomenon. Some factors responsible for poverty are internal to a poor person such as low calorie intake, mal-nutrition, sickness, low mental and physical capabilities and hence low productive capacity. Some other factors causing poverty are external to poor person like absence of proper socio-economic infrastructure like rural roads, safe drinking water, schools and hospitals or lack of opportunity to bear a proper means of livelihood. It is a combination of both internal and external forces which causes poverty in household and any attack on poverty has to be cohesive and multi-pronged. The official programmes of poverty alleviation at the policy level have been tailored to attack poverty in its different facets so that the programmes are able to capture the complexities of the issue at hand.⁴

The initiation of large-scale anti-poverty programmes as increasingly important and integral components of the planning process occurred after the 1971 parliamentary elections in which Mrs. Gandhi's central election slogan was "Garibi Hatao" (abolish poverty). The adoption of this slogan and of the programmes

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that followed it, according to Paul R. Brass, were part of Mrs. Gandhi's political strategy of building an independent national support base that would free her from political dependence upon the party bosses in the states, whose own support bases were primarily among the dominant rural proprietary castes and the urban commercial classes. Although, the 40 to 50 per cent rural and urban poor lacked political weight, they represented a potential national vote bank that was far larger than any alternative sources of votes for her rivals.⁵

Thus, since Fifth Plan a number of programmes have been promoted as a means of "carrying" or "lifting" people over the poverty lines. These anti-poverty programmes have not been officially

promoted as an alternative to land reform measures but it seems that this is their political function for the ruling party.

The anti-poverty programmes themselves fell into two broad types. One was designed to actually lift beneficiaries above the poverty line by providing them "with productive assets" or skills or both so that they can employ themselves usefully to earn greater incomes. Under this heading of "beneficiary-oriented" programmes were the Small Farmers Development Agency (SFDA), the Marginal Farmer and Agricultural Labour (MFAL) programme and later the Integrated Rural Development Programme (IRDP). The IRDP, introduced in 1978-80 under the Janta regime consolidated the existing programmes such as the SFDA and MFAL, and also introduced the Antayodaya principle of beginning with the poorest. Antayodaya means "uplift of the poorest". Under this principle, the selection of initial beneficiaries was to be done from among the poorest persons and families in each village in a community development block, who were to be provided with productive assets sufficient for them to lift themselves above the poverty line.

The second type of programmes was designed to be ameliorative only, to provide temporary wage employment for the poor and landless in season when employment opportunities are reduced and in areas such as dry and drought prone districts where they are less available than in more favoured districts even in the best of times. These programmes have had names such as the Crash Scheme for Rural Employment (CSRE), the Drought Prone Areas Programmes (DPAD), the Pilot Intensive

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Rural Employment Project (POREP), The National Rural Employment Programme (NREP) and the like.⁶

By the time of the Sixth Five Year Plan (1980-85), three particular programmes were the core of the anti-poverty strategy : the IRDP , the NREP and the Special Component Plan (SCP). The most important in terms of resource-allocation has been the IRDP.

Integrated Rural Development (IRD) was a term which began to be used in the mid-seventies to denote a more decentralised alternative path to development which would place greater emphasis on building industry and therefore new areas of employment in rural areas. The Janata Government which came to power in 1977 set about pursuing the approach more systematically, since it seemed to represent an upto-date implementation of the Gandhian philosophy of some members of that government.

Over a period of time, however, IRDP was transformed from a general programme of rural development into a highly specific scheme to provide poor persons with income producing assets. The theory was that these assets would so supplement income from labour that the beneficiaries would be permanently raised out of poverty. Thus, it aimed to raise people above the poverty line by giving them subsidies and cheap bank loans to acquire assets like cows, bullock-carts and shops, thereby making them entrepreneurs.

While the IRDP idea makes sense in principle, in practice evidence has been that the IRDP has not had the desired effects. There is no aggregate data on IRDP but there is a very large number of studies conducted in different parts of India and none of them claims any major reduction in the scope of Indian poverty through this programme. A recent study by Dr. Nilkanth Rath suggested that only 10 per cent of the IRDP beneficiaries have been raised above the poverty line. The Planning Commission, however, feels that it is closer to 40 per cent.

The more successful programme has been the National Rural Employment Plan (NREP). This programme was first initiated in the 60s as "food for work programme". All that is done under these programmes is to provide relief in the form of daily wages for labour on public works. Road and dam building are two of the favourite projects. The object is to provide

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employment in areas and period where alternative employment is not available.

As they have been conceived and operated, these food-for-work programmes have been frequently judged to be no more than a "band-aid" or form of emergency relief. They have often been condemned as perpetuating "wage slavery" in the form of a pittance for the building of assets of primary use to the labourer's superiors, often oppressors, in the countryside. There is no doubt that any radical potential of such programmes has been stymied. Thus, care has been taken that the availability of work is confined to season where private labouring work is not available. This may seem a sensible expedient but it also has the effect of under-writing low wages for agricultural labour, since there is never an alternative form of employment available to the labour.⁷ In fact both IRDP and NREP have their own merits and limitations. Dr. Rath feels that the asset transfer approach of IRDP has been such a flop that the government should focus instead on wage labour schemes like the NREP and Rural Landless Employment Guarantee Programme. However, other experts like Prof. Dantwala have pointed out that there are as many leakages and failures in waged schemes as in the IRDP. The best way seems to be to focus on wage-labour scheme in backward areas and press on with IRDP in agriculturally developed ones.

In 1989, the government also introduced new employment generation schemes like Jawahar Rozgar Yojna. During National Front Government (1990), it looked that under the rural development programmes, the employment schemes will undergo a set change. A large number of work schemes looked on the anvil to meet the promised provision for "right-to-work". But nothing came out. The Eighth Plan (1992-97) claims as its objectives: generation of adequate employment to achieve near-full employment by the turn of century, containment of the population growth; universalisation of elementary education and complete eradication of illiteracy in the age-group of 15-35. Narasimha Rao Government (1991-96) injected heavy doses of funds into the rural development and poverty alleviation programmes. The first budget of United Front coalition government in 1996 laid particular emphasis on removal of rural poverty.

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In spite of these programmes and increase in the outlays, the number of families below the poverty line has not decreased much. Most of the schemes to alleviate poverty stricken people

have not adequately reached their intended targets. Analysis carried out by experts have revealed shortcomings in the implementation process-faulty selection of beneficiaries, lack of awareness about the schemes and leakages at the district and block level. Surveys had revealed recently that a majority of people did not even know the notified minimum wages and the fact that men and women entitled to equal wages.⁸

The professional economists also have differences with official statements and perceptions on poverty. According to them, Planning Commission's poverty reduction claim is linked with (1) the overall growth of income and (2) the expenditure on two major anti-poverty programmes. They suggest that the linking of the poverty ratios with per capita income can hardly be justified, because there has been no significant correlation between the two ever. If in the past the growth of average income left the poverty ratios unchanged, there is no reason why the growth of average income should suddenly begin to reduce the poverty ratio. The second link between expenditure on rural development schemes and the reduction of poverty, assumed by the Planning Commission, is suggested to be even more fragile. According to this, it seems that all the beneficiaries of the two major anti-poverty schemes, the IRDP and NREP are supposed to have moved above the poverty line. This supposition is clearly unwarranted in the light of widely known facts about the implementation of these schemes. It is known that a high proportion of the funds earmarked for these schemes remains unutilised in many states. The misappropriation of funds by bank officers, bloc officers and other functionaries of the development agencies is often so large that only a small proportion of the funds really trickle down to the target groups.⁹

Further the physical target orientation of community development administration has resulted in misplaced emphasis — on physical facilities and inputs—instead of directly promoting change among rural population in attitudes and behaviour necessary for economic, social and political change towards participatory democracy. If only the development programmes had been carried out honestly and without leakage of funds and

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if the benefits of the programmes had reached the targeted beneficiaries, the situation would not have gone the way it has. For several years, the under utilisation of development projects and inefficient public sector cost substantially and the revised estimates were also faulty. The role of voluntary agencies in development has been deprecated. Their utility in changing the attitudes, customs, and feelings of the masses was undermined.

The story of the failure of land reforms has been told many a times. The central failure is that the idea of "land to tiller" has remained a slogan. The abolition of intermediaries — zamindar, jagirdar etc. and associated measures of land reforms have benefited the middle tenants or peasant proprietors.

Failures on population front is also responsible for persistence of poverty. From approximately 240 million in 1901, the population stood at 344 million in 1951, 684 million in 1981 and 864 million in 1991. So while GNP has been increasing on an average rate of 3.5% the population growth rate has also been approximately over 2%. With this, population growth rate, that does not yet show much sign of delereation, per capita income has crawled at the rate of about 1.4%.

At this rate, even if the inequality in the distribution of income remains unchanged, it will be an unconsciously long time before any significant dent is made in the backlog of extreme poverty.¹⁰

Another factor about the persistence of poverty is that it is widespread in rural areas. On the basis of per capita consumer expenditure in 1983, 44.4 per cent of the rural population were below the poverty line compared to 46 per cent in 1971-72 and 54.9% in 1972-73, 54.97% of the rural population had a per capita monthly consumer expenditure from Rs. 30 to 100 and another 36.77 per cent from 100 to 200. Only 5.77% of the rural population was in the category of Rs. 200 to 300 and just 2.42% constituted what may be called relatively affluent, i.e. those whose consumer expenditure was about Rs. 300 and above. The situation is still worse for Scheduled Castes and Tribes. While the decline between 1977-78 and 1983-84 in rural areas was estimated around 12.5 p.c. and in urban areas about 7.8 p.c. The rate of decline for the Scheduled Castes and Scheduled Tribes was 7.6 p.c. and 7.1 p.c. respectively. Further, in the Urban areas , there has been no decrease but on the contrary an increase in the number of the poor belonging to the Scheduled castes and tribes, partly due to

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migration from the rural areas.¹¹

Rural poverty is in part the result of a radical decline in the private welfare benefits and subsistence security that many labourers once enjoyed as attached members of rural house holds. The employment and welfare insecurity of the rural poor constitutes a hidden asymmetry between the organised industrial and service sectors and the unorganised agricultural sector of the post-independence Indian economy. Insecurity is hard to measure it involves qualitative dimensions of employer-employee relations. As impersonal market and profit calculations replace dominance, they dissolve the sentimental bonds and mutual obligations linking master and servant or patron and client. Agricultural labourers became "free" but insecure as they leave the fold of household economies to enter labour and wage goods markets. The private welfare benefits and subsistence security that masters and patrons extend to servants and dependents for loyal service are replaced by uncertain wage employment. As labour become a commodity that figures prominently on the cost and quality of production, the private welfare aspect of traditional interdependence disappears. In the absence of public welfare programme for the aged, sick, hurt disabled and unemployed the dissolution of the traditional obligations leaves employees and their families at the mercy of what their wage can buy in consumer and service markets.¹²

Thus in general the Indian "war on poverty" provides an example of the problems involved in formulating and implementing policies in India's multi-level political system. The weakness of most of the programmes adopted arise in large part of the difficulties involved in formulating policies in New Delhi to be implemented at the state and local levels with the existing bureaucratic apparatus. Many of the problems encountered in the implementation of anti-poverty programmes also reveal the extent to which locally dominant classes are able to absorb and even profit from programmes meant for the poor.¹³ The net result is that over the years, in spite of the economic development but due to specific pattern of Indian development and absence of proper

institutional structure for social transformation, the conditions of the majority of those living below the poverty line have remained stagnant or only marginally improved in some regions. Large sections of the population find themselves

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permanently economically non-viable and hence in abject poverty while a large proportion of the productive assets is concentrated in the hands of an affluent minority who occupy the centre of the economic and political power structure. To correct extreme inequality, the poor need to have access to the power structure which, being itself governed by the level of asset ownership, is denied to them by virtue of their not possessing the productive asset Poverty thus becomes self-reinforcing and acquires a persistent if not permanent character.¹⁴

Economic Reforms and Poverty

As already mentioned economic reforms introduced since early 1990s have the basic objective to build an open, productive and competitive economy. There are two views with regard to these reforms as far as issue of poverty is concerned. One view is that the reforms will definitely help the poor by making the economy grow faster. According to this view the benefits of rapid growth don't merely "trickle down" to the majority of the people but they flow down like a river in flood. Example is given of the eight high performing countries of East Asia— Indonesia, Malaysia, Thailand, Singapore etc. which have not only grown fast but are quickly wiping out poverty.¹⁵ Second view on the basis of same examples suggests that in similar moves initiated by many other developing as well as developed economies, their poor and vulnerable sections are often seen to be adversely affected in the short run, primarily confined to the stabilisation phase of the reforms. These effects are often referred as the social cost of adjustments. In several cases, these adverse effects have been continued beyond the short run. S.P. Gupta points out that the short-term welfare setbacks of India's economic reforms support the experience of a large number of reforming countries. In many of these countries one notices no effective recovery in their growth of income and exports, no improvement in poverty and no reduction in inflation.¹⁶ Suresh D. Tendulkar and L.R. Jain, however, conclude that economic reform related decisions contributed indirectly rather than being the only or even the major cause of the sharp accountation of rural poverty.¹⁷

The most disturbing aspect of the situation is that in practice poverty, despite all the noises made to remove it, has come to be accepted not only as necessary for maintaining the living

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standards of the top 10 to 15 per cent but implicitly encouraged as a structural barrier against both inflation and revolution. The new policies maintain the political opportunism of the old by recognising the failure of the policies and even highlighting them through the officially controlled media. The fact that the poverty debate has nearly ended without ending the poverty is a clear expression of this de-sensitisation.¹⁸ Of course the real outcome of economic reforms is yet to be seen but what is visible at least in the short run is that while the creamy layer of Indian

society has entered the satellite era, the masses go to bed hungry by candlelight. This obviously has significant psychological and political consequences.

Poverty and Politics

In democratic set up of India with universal suffrage it is the vast ocean of poverty stricken humanity living especially in the rural side of India, living below and just above the poverty line which has the major share of votes in the Indian elections. Poor, illiterate, superstitious with a sense of belonging only to the caste or religion and with no access to proper communication, except occasionally the government-run broadcasting system, their enormous human wave is driven to the polling station.

The behaviour of the poor is characterised by suspicion, apathy, dependency and conformity, having little social organisation. This results in a thinking and feeling which is different. Their participation in the life situation is influenced by their roles which are vulnerable by virtues of the dependent relationship they have with those who occupy positions in the upper echelons of the social structure. Therefore it has been said that the poor would rather have the uncertainties of life guided by a fatalistic outlook than the uncertainties associated with new economic or political ventures. This is also one major reason for continuance of population explosion.

Poor naturally perceive the quality of their life as being stagnant and if anything, likely to deteriorate further in days to come. They are mostly illiterate and assetless. There is no possibility on the horizon to induce them to invest more in each child to improve its or their own prospects in life. Instead at a very young age the children are drawn into helping the family in its desperate scramble for resources. No amount of propaganda is then going to motivate them to limit family size.

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That, too, will have to be a long drawn-out process of alleviating poverty and illiteracy and of improving their prospects in life.¹⁹

Divided from each other by economic interest and world view and facing larger, more powerful groups of self-employed independent cultivators and large landowners the rural poor are not in a position to become a dominant hegemonic or revolutionary class in the agricultural sector of the economy. Wage workers in agriculture and those in the organised sector of the economy have not responded to ideological constructions that describe them as a homogeneous class. Nor do poor and middle peasants perceive themselves as a natural allies of urban workers in struggling against capitalism, imperialism or feudalism.

Mobilization of the rural poor has not been the reflexive result of nationally aggregated global characteristics or historically determined class formation. Nor has it occurred automatically as the result of favourable local objective determinants or historical conjectures. Such determinants can be necessary but not sufficient conditions for collective action by the poor. When mobilisation has occurred it has been mediated by leader's social and ideological constructions of varied local conditions, historical circumstances and ideological currents. In the face of adverse

local poor and palpable risks, objective determinants are not self actuating or self-executing. Mobilisation of the rural poor has occurred when known and trusted leaders have been able to translate favourable conditions into ideological and policy terms that capture people's sense of who and what they are and what they are prepared to risk. The rural poor have not readily or often responded to the idioms or goals of class ideology. But they will remain an important component in Indian politics because they can be mobilized in particular contexts and historical moments and because national, sectorial, regional and class organisations will continue to vie for their support.²⁰

Also the poor are not uniformly passive. In sections, they are increasingly assertive, non-violently and violently. Indian governments are aware of their assertiveness and when pressed, respond to it. The poor effect the course of change. During various elections they have proved that their voting act is not isolated from the socio-economic setting. Since they are in

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majority, properly organised and mobilised they can radically alter the election results. Therefore the vested interests have to manipulate the elections to negate the democratic outcome. The crude ways of robbing the elections of their democratic context are to increase the role of money and muscle power in them, so that brilliant and decent people shy away from them. Another way is to whip up communalism and casteism to gain votes. It is this contradictions of development and poverty on the one hand and manipulations by the ruling classes on the other which has provided a continuing social and material basis for the production, reproduction, sustenance and reinforcement of all sorts of religiosity, revivalism, fundamentalism and obscurantism. As a result nation is getting divided against itself everywhere.

Poverty is a great threat to the survival of democracy, stability of the system and unity and integrity of the country. Yet, it seems, the ruling classes have a vested interest in sustaining poverty to enjoy benefits of development on the one hand and control vote-banks on the other. The consequences are obvious.

Notes

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Regional Disparities and Tensions

On the eve of independence, the Indian economy was not only backward but also characterised by much regional imbalances. As has been mentioned in earlier chapters, there is enough evidence to suggest that the colonial rulers did not bother about the balanced economic development of India. In fact, the very exploitative nature of it helped either to create or accentuate regional disparities. Even after about 50 years of independence the problem of regional inequality in India is of typical nature. There are poor regions possessing rich resources like Orissa and Bihar, and rich regions poor in resources such as Maharashtra. Regional inequality is complex and it is due to several factors. The starting point, of course, is the effect of colonial rule.

Imperialism and Regional Disparities

To begin with British imperialism every where sought to introduce a market in land in India. But the tenure system differed from region to region depending on the specific conditions conducive to colonial exploitation. These variations in land tenure led to different systems of surplus creation and absorption, and the size of the surplus also differed. Further, keeping in view its own colonial needs British rulers whereas made some significant efforts for improvement of agriculture in some areas, the other areas were completely neglected. Thus there were considerable variations both in the production relations and level of production in different states and regions.

The pattern of urbanisation based on the strategy of exporting primary products laid the foundation for the emergence of port towns as the major centres of urban-industrial activities. Also capitals of several princely states developed a

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pattern of centripetal development around them. Therefore, the growth of trade and commerce in colonial India meant the creation of jobs and educational opportunities at coastal centres like Bombay, Calcutta and Madras and in some princely state's capitals. This also led to the emergence of some consumer industries in these enclaves and hence to the development of a merchant capitalist class which started to invest in Industry. This gave these regions a head start over other regions where the vast tracts of agriculture had lost their traditional handicrafts and other small scale non-agricultural activities in the face of competition from the high technology associated with the modern processes of urbanisation and industrialisation. Also small towns including a large number of port towns became stagnant.

Another factor in the uneven regional development was the growth of the education system. As the British imperialists had linked India to the metropolis via trade relations and the coastal areas especially around the ports of Bombay, Calcutta and Madras, these areas became the intermediate links acting as an agent of the metropolis to the Indian hinterland and of the hinterland to London. To man the establishments in these areas modern education was introduced. An educated professional class, mainly lower paid government and commercial clerks, grew up in these areas. These regions also threw up an elite bourgeoisie group of lawyers who were involved on both sides of the independence movement.

Therefore, after independence, India emerged as a federation of a few relatively rich and industrialised states and also of many poor states which subsisted mainly on agriculture with primitive techniques and semi-feudal agrarian relations.¹

In Independent India, the government was not only committed to the removal of disparities, both personal and regional but it was imperative if allegiance of different people towards a common political authority was to be obtained. For the existence of pronounced regional disparities in the levels of living was fraught with very dangerous consequences, particularly in view of the fact that regions (both at state and sub state level) differ from each other, in terms of political culture and traditions. Hence it was accepted that the state has to play a major role in removing regional disparities.

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Regional Policy in Independent India

In view of the above, the theoretical formulation and the policy concern in the post-Independence development strategy should have been correcting the spatial imbalance. This implied that the planning process should have been designed to bring higher growth in the poor states in comparison to the rich states. This need for the removal of regional disparities in a way was well recognised by the leadership. In fact, the Constitution of India, itself, made it incumbent upon the Government at the Centre to appoint a Finance Commission once at least in every five years to examine the problems arising out the gaps between the needs for expenditure and the availability of revenues of the different states of India and other similar issues [Article 280 (3)]. Thus balanced regional development has been a repeatedly declared goal of the central government and of its two principal agencies that can influence the process, namely, the Planning Commission and the Finance Commission. One of the objective of planning was to restore the balance between various areas and regions. However, these institutions were to work within overall socio-economic infrastructure of the country and the political process developing in that. As has been mentioned already that because of the strategic position of the ruling classes and adopted model of development right from the beginning the development has been drifting away from the desire and described goals. In the same context the idea to remove disparities has remained more a precept than a reality. A brief analysis of the steps taken in this regard and their consequences will suggest the true nature of regional policy of India. Here it may first be pointed out that in our Constitution the centre has been provided with the most potent instruments of resource mobilisation. Most of the high yielding and elastic taxes have fallen in the share of the union government. The Central government can easily raise resources by increasing the prices of some of its public sector products. The centre is also able to mobilise resource through its budgetary deficits. All these practices provide the centre with the resource mobilised from the people and corporate sectors located in the states.

The institutions through which part of these resources gets transferred to or invested in the states are the Finance Commission awards, the plan assistance by the Planning

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Commission, the investment by the non-departmental Public sector undertakings, the central and centrally sponsored schemes and public sector financial institutions.²

Finance Commissions

To suggest the criteria and principles for division of economic resources there have so far been recommendations of Ten Finance Commissions, these being appointed in the years 1951, 1956, 1960, 1964, 1968, 1972, 1977, 1982, 1987, and 1992. The recommendations of various commissions have aroused interest in the problem of regional inequalities and measures provided through the implementation of these recommendations. But to begin with it appears that in general the Commissions have not had the reduction of regional inequalities in levels of living as their terms of reference. They have not been, in specific terms considering this as an objective in recommending devolution of finances from the centre to the states. Two further points need to be noted here. Firstly the transfer of funds from the centre to states as a result of the recommendations of the Finance Commissions are not of that magnitude as the allocation from the Planning Commission. Secondly the major issue is not the mere allocation of funds but the manner of utilization of these and the impact it produces on the economy of the less developed regions. In this context, Finance Commission has no role to play.

All this does not mean, however, that the Finance Commissions have not taken into account the existence of interstate disparities in the levels of living at all in making their recommendations. Different criteria have been used to distribute among the states the different components of the total devolution as a result of the recommendations of the Finance Commissions. In regard to some of these, explicit attention has been paid to the fact that the needs of expenditure of the different states are different. In fact it appears that the devolution, except those on the basis of the second Finance Commission, have been progressive in the sense of being more favourable to states with lower per capita Net Domestic Product. But, as already mentioned above, it is extremely doubtful whether even a deliberate attempt on the part of the Finance Commissions to allocate the total amount transferred between the states in such a way as to reduce inter-state disparities in the levels of living,

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would have led to a reduction in these. This is so because resource transfers from the centre to the state Government through the Finance Commission awards are relatively less important than those through other means. In fact, for the period 1951-78, more than 62 per cent of the total transfers seem to have taken place through other means. Also Finance Commissions have nothing to say on development strategy which in itself is quite significant in this regard.

Planning and Regional Disparities

More important role, in the removal of regional disparities, therefore, was expected from the Planning. In fact at the time of the establishment of planning commission in its aims and objectives an important place was assigned for this task. But as was mentioned in the chapter on development strategy, the planners right from the beginning were caught in the unnecessary

conflict between the needs for increase in production and justifiable distribution of resources and products. In this planners have been more concerned with the rate of growth. Moreover to begin with planning was primarily restricted to the national level. In this period, which was one of pure adhocism, the plans formulated were in terms of sets of directives and goals for the orientation of the economy as a whole. Hardly any attention was paid to the problem of regional disparities and the few measures that were taken were adopted to deal with specific problems faced by certain areas having natural calamities. Thus the problem of regional development in a national context did not get adequate attention of the policy makers. It did not receive any attention during the First Plan. As a result the development programmes definitely resulted in lop-sided and distorted development, some of the already developed regions enjoyed the privilege to develop further at the cost of the backward regions which continued to stagnate. The record plan did recognise the importance of the problem atleast theoretically. It accepted in principle that disparities in levels of development between different regions should be progressively reduced.

The Third Five Year Plan devoted some attention to the problem of regional disparities specially. Some efforts were made to identify the backward regions. Fourth plan onward have increasingly emphasized this objectives. Deliberate policy measures are being also taken to improve the levels of living of

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the people in regions identified as backward. However, in practice, inspite of the increasing awareness of these aspects, very little has been achieved. It has not meant the formulation of a regionally balanced plan in which the plan is made with the pulling up of the level of living of the people in the backward regions to a specified level within a prescribed time horizon as an avowed objective. Actually the lack of a regional dimensions to the Indian plans seems mainly because the entire approach to the issue is coloured by certain assumptions which are being proved wrong.

With regard to regional policy one such assumption is that there is a trade off between the reduction in regional disparities, in the levels of living and national economic growth, particularly in the short run. This is, in fact, what has prompted almost all plan documents to repeatedly stress that in the short run, with limited resources, a developing country like India can ill-afford measures for the reduction of disparities. Another erroneous assumption has been that Industrial development can be treated as synonymous with economic development at the regional level. Such an assumption was stated as early as in the second five year plan period and continues to dominate the thinking on regional policy by the framers of the Indian plans. As a result of this, while industrially backward regions have been identified by India's Planning Commission, no such attempt has yet been made as regards regions which can be deemed to be backward from the point of view of overall economic development. Actually the main focus of regional policy during the Indian plans has been on the dispersal of industry among the different regions of India. In this process, one of the simple lessons emerging out of a reinterpretation of the history of the economic development of the countries of Western Europe seems to have been neglected. This is the fact that the agricultural revolution has to precede, by decades, the industrial revolution and is more the cause than the result at least in the initial stages of the industrial revolution.

In spite of so-called attempts for rapid industrialisation agriculture continues to be the most important economic activity still from the point of view of output and employment in the states of India. And within the agricultural sector again because of emphasis on immediate increase in production inter-state

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disparities in per capita agricultural production have been on the increase. As is by now well known in agricultural development policy in green revolution and its impact has been confined to relatively small areas and under highly skewed distribution of land among different size of holdings. The strategy of concentrating on modern input in irrigated areas for crops for which high yielding varieties were available (mainly wheat) was inherently poised to accentuate inter-state disparities in food production. Thus the disparities in socio-economic conditions of the people have been increasing both within and between different regions of the country.

Political Process and Regional Disparities

In abolishing or sustaining regional disparities more important role, then either of Finance Commissions, or Planning Commission, is that of political process. Not only policies are formulated and implemented by the political institutions and pressures but also the Finance Commission and Planning Commission work within its context and influence. As has been mentioned in earlier chapters given the historical and socio-economic context politics in India was looked upon as an important instrument for development. For this purpose the political elite adopted a strategy of Mixed economy within the framework of democracy to achieve class conciliation and goals of equity and justice. For the success of this model was required establishment of a social system based on equality, decentralisation of powers and satisfaction to the masses of participation in economic and political processes. However, keeping in view the votes in elections and support of elite groups to acquire and retain power the rulers had to placate those classes and sections who could obtain or influence the votes and support for them. As a result allocation of resources and products or fulfillment of demands were not decided on the basis of overall social necessities, class or regional inequalities or goals of equity and justice, but under pressure of these influential and strong sections of the society who on the basis of their social and economic status could influence politics.

With regard to regional policy obvious effect of such a situation was priority for already developed regions and sectors. Within capitalist system the industrialists from developed regions with their economic power, administrative connections

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and political links were able to get more infrastructural facilities (like power, transportation and communication, Railways etc.) in those very areas, similarly political elite from the developed states, on the basis of their better education, skills, manipulative capacities and role in the overall politics of the century were able to present the demands for their own states in a way as if those were concerned with the development of the nation as a whole. For example in the states where the Green Revolution has been most beneficial for the landlords, even to-day subsidies,

assistance, concessions and support are demanded for the sake of solving food problem of the country. Similarly because of better education, skill and technical training people from the better off states had been in control of most of the administrative decision making and even political institutions in the centre. Inspite of administrative neutrality and ideological commitments these people had overt or covert attachment towards their states or region. No doubt it is a contradiction as far as liberal democratic values are concerned. But in the given socio-economic infrastructure it is a hard reality.

As such, inspite of the acceptance of the goal of removal of regional disparities at ideological and programmatic levels, insertion of these ideas in the constitution and plan documents and adoption of various policy measures, after 45 years of independence the regional inequalities and disparities not only continue but in many cases have increased. There is virtual unanimity among scholars who have analysed inter-regional disparities in India on two points the disparities have increased and central policies on resource transfers have not only been unable to prevent the increasing gap between the rich and poor states, but may have contributed to accentuating the disparities. Most indexes designed to measure the relative standing of the several states do not show much change since Independence. The more urbanised states and the states that benefited from intensive irrigation development ranked high in per capita income and net domestic product at Independence and they continue to rank high today. Those states that experienced little of either urban or rural development before Independence ranked low in per capital income and net domestic product then and continue to do so today.² Disparate regional development divides the country into zones of poverty and prosperity.

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Socio-Political Effects of Regional Disparities

Existence and continuance of regional inequalities and imbalances create various types of tensions. In a country which is multi-ethnic and multi-religious with ethnic-religious groups concentrated in some states in many cases these disparities also become course of social conflicts leading to political and administrative problems. Sometimes therefore a challenge to very integrity and unity of India.

The very first impact of regional disparities is the growth and development of regionalism and sub-regionalism. It may be pointed out at the outset that in a plural society like India, to an extent regionalism and sub-regionalism is obvious. Also by itself these are not dangerous to the integrity and stability of the country. On the contrary many a time regionalism has been proved more conducive for the maintenance of unity. But in the context of economic inequalities and disparities regionalism may become separatism and a serious problem. There are various reasons for the growth of regionalism as a result of regional disparities.

In the absence of National economy there are a large number of bourgeois entrepreneurs whose activities are confined to small regions. These businessmen rely for their labour and market on the local population. Their interests thus frequently conflict with the big bourgeoisie, which relies on a national market. For its part, national capital in India derives mainly from early merchant capitalists like from Bombay and Calcutta, who to-day control a major part of the

industry, trade and finance not only in these cities but throughout the sub-continent. Naturally, the regional bourgeoisie of the different states, who arrived late on the scene, resist monopolistic control by the big bourgeoisie. And for this they look towards the state governments to place restrictions on the national level monopolistic interests. Obviously, therefore, they support such parties and groups at state level which are state or region based. In the fifties and sixties this also produced violent struggles for the creation of linguistic states, which mobilised both regional capital and the non-bourgeoisie opposition parties in such states as Maharashtra, Orissa, and Mysore. The movements were launched on linguistic and cultural basis, but an analysis of support base and leadership patterns clearly suggest that it was a protest against the big

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bourgeoisie, who mostly came from other states or regions. This unleashing of regional chauvinism also often hinders the creation of national level class consciousness.⁵ Even to-day these groups of petty bourgeoisie and middle classes support and sustain regional parties in various states.

Two recent examples of growth of regional movements currently active are those of Jharkhand and Uttarakhand.

Jharkhand area also known as Chotanagpur plateau, includes a cultural region comprising 21 contiguous districts in Bihar, Madhya Pradesh, Orissa and West Bengal. The region has the richest deposits of mineral wealth. More than 25% of mineral activities of the country as a whole are carried on in this region. But for years these resources have been used for industrialisation without any benefits to the people of region a large majority of whom are tribals. The setting up of industries and subsequently the development process initiated by five year plans rather than helping the indigenous communities have been adversely affecting them. They have been uprooted from their lands and forced to become labourers. A significant portion of tribal population had to migrate out in search of livelihood. On the other hand a large number of outsiders had come to the region as businessmen, contractors and in various positions in industries.

A section of Jharkhand protagonists have designated this economic plight as one due to internal colonialism where underdeveloped region has been exploited by developed regions as their colonies. The ingredients of this colonialism have been earmarked as (i) The caste system which determines the division of labour in the country and shapes the mental attitude to physical work. The administration and police also work on this basis. (ii) The uneven development of the society is said to be the second ingredient. Related with it is the discrimination in development between the two regions, viz. plains and hill areas of Jharkhand. (iii) Land and Forest alienation has gone deep due to implementation of river valley projects and setting up of industries. ⁶ Thus, a sense of economic and cultural deprivation among the tribal people of the region has given rise to strong movement for creation of a separate Jharkhand state.

Similarly in the hill regions of Uttar Pradesh known as Uttarakhand the grouse of the people is that successive governments have neglected and exploited them. At the planning

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level the problems of Uttarakhand have been well understood. For example, the increasing denudation of forests due largely to commercial felling, the large scale migration of able bodied males and the consequent emergence of a "money order" economy with increasing femination of the hill economy and society, have been well-documented. It is also recognised that the hill areas have a comparative advantage in horticulture and agro-processing which have a favourable export demand besides being environment-friendly; that the expansion of public distribution of foodgrains is necessary to protect the environment by discouraging the cultivation of food crops, and that there is a great potential for the location of pollution-free industries which are skill-intensive such as electronics. The need for the active involvement of the people, particularly women for the protection of the environment has been repeatedly stressed.

Despite all this, if the impact in terms of development, conservation of environment and the expansion of employment opportunities has not been satisfactory, and if the feeling of neglect persists in the region, the inescapable conclusion is that all this wisdom has largely remained on paper and has not been backed by effective administrative arrangements for putting these ideas into practice. It is readily acknowledged that there is no regional planning worth the name for the hill areas in Uttar Pradesh. The so-called regional plan is reduced essentially to putting together schemes undertaken by various departments at the state capital.⁷ Result is that even though as many as three Chief Ministers — Govind Ballabh Pant, H.N. Bahuguna and N.D. Tiwari — came from these hills there is widespread poverty and backwardness. People are condemned to living a hard life. There has been slowly developing a sense of dissatisfaction among the people. The issue of reservation provided them a catalyst and now there is a strong movement for a separate Uttarakhand State.

Apart from sense of deprivation in the neglected States or regions the development efforts and benefits concentrated in certain areas or states have also given birth to vested interests, particularly in the rural parts of the developed states. For instance in areas where Green Revolution was introduced and has been successful the new rich farmers class has become economically and politically important. They are now interested in

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perpetuating the concessions and facilities which were given to them to usher in the Green Revolution. Inspite of agriculture having become quite profitable they want subsidies to continue even at the cost of neglect of other areas. Not only they are trying to influence the the policies at state level and through that at national level, but of late have started organising and directly participating in politics on class level. Success of Akali Dal in Punjab, Lok Dal in Haryana and Western parts of U.P., to an extent Telegu Desam in Andhra Pradesh and movements like Shetkari Sangathan in Maharashtra etc. are pointers to this direction. With the strength of newly gained economic power, its numerical value, social status and links with the administrative machinery this class has been able to appropriate various development funds for its own use. They have also been successful in preventing the imposition of tax on agricultural income, get reduction in price of fertilisers and pesticides, getting remunerative support prices for foodgrains etc. Consequently much of the tax burden and increase in prices fall on poor urban people and

agriculturally backward regions. As a result, one, regionalism and regional parties are growing, second there is emerging a rural-urban conflict and there tensions, between developed and under-developed regions are becoming severe.

Another aspect of unbalanced development is that because of development only in limited areas the work force from other states and areas keep on flocking to the developed areas in search of jobs and employment. Continuous large scale arrival of Industrial labour from South India and other parts of Bombay, from Bihar and Orissa to Calcutta and agricultural labour from eastern U.P. to Punjab, for example, are creating two types of tensions. On the one hand it affects the cultural harmony of those areas by creating apprehensions among the linguistic and cultural groups about their position. One of the backgrounds of Punjab problem in 1980s was this. There is a fear among the Sikhs of their being reduced to a minority in the state of their concentration. Second it generates ill-feeling in the local work force, who either are unable to get jobs or in view of migratory labour's willingness to work at lower rates become unable to bargain effectively with the local employees. This gives birth to the sectional organisations and sons of the soil agitations. The phenomena of Shiv Sena in Bombay is the glaring example of

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this.

Further in the absence of job opportunities in rural areas and small towns, educated, semi-skilled and unskilled and uneducated unemployed people keep on arriving in metropolitan and big cities thereby increasing in the population pressure tremendously. This results in unplanned and unchecked growth of these cities, failure of civic and transport services, nonavailability of houses, growth of slums and rapid increase in cost of living. This on the one hand frustrates all the plans and efforts of city planners and on the other creates and increases social tensions, crimes and protest movements of various types.

One more effort of this is that the educated middle classes of the developed regions are politically and otherwise better equipped and skilled. They, therefore, are able to take the best government jobs all over India. The new and emerging educated sections of backward areas see them as appropriators of their opportunities, particularly within their own states or regions. The class interests of the educated classes from developed regions and states working in backward regions make them side with the national government while the newly educated groups of the backward regions look towards their own state governments as guarantors for share in economic surplus.

Similarly expansion of education, particularly higher education, but not industrialisation and other job creating institutions is increasing the army of educated unemployed youths in the backward regions. These frustrated youngmen are allured by the movements against the inflow of people from other countries and states. One of the basic reason behind Assam agitation is this. Similar developments are simmering up in parts of Bihar, and Orissa. On the other hand these unemployed youths are also attracted by the caste, communal and other sectional agitations fighting for the protection of rights on sectarian lines. Conflicts on caste lines, particularly for reservation of jobs in Bihar and Gujarat, growth of caste and sub-caste associations in towns and

cities and continuous increase in communal conflicts, inspite of so-called modernisation and expansion of education are, to an extent, because of this reason.

Finally lack of national economy in industrial projects and the predominance of small peasant agriculture in large parts leads to a tendency towards fragmentation of class struggle into

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regions with inter-regional antagonisms added to class antagonisms. A revolutionary movement in a single region thus gets isolated since the objective conditions of alliance with other regions are lacking. Having inherited the administrative superstructure of a nation state without an underlying base of national economy and national division of labour, the federal government can use this fragmentation and isolation of regional struggles to defeat them. The agrarian unrest in Telengana, and sporadic Naxalite activities are examples of such isolated struggles. The Naxalite movement particularly deserves attention. Beginning in 1969 it was definitely an ideology and strategy based movement. But its localisation in certain parts of India, especially West Bengal, Andhra Pradesh and Kerala meant that the federal Government was able to counter it with the Central Reserve Police and other Para-military forces in each State separately. Attempts to link up separate movements met with little success.

Uneven regional development, therefore, has meant uneven and often isolated development of the class struggle, trade unionism and ideological uprisings in different parts of India. Inter-regional difference in the intensity of class struggle, and inter-regional rivalry between the politically articulated petty bourgeoisie of different regions have extended regional factions of political parties also. While parties have national labels they have diverse regional existence. The ruling party has for a long time been a coalition of regional forces. When it is in power it can dispense jobs and patronage, which keeps this coalition together. For the purpose of perpetuating the coalition it has at its service the administrative superstructure and the ideology of nationalism, first developed in anti-colonial struggle, but kept on since then by an appeal to the unity of India, against foreign enemies. But out of power the parties find it hard to perpetuate the coalition of regional interests. Division of Congress after the defeats in 1967 and 1977 election, disintegration of Janata Party after 1980 and Janata Dal after 1990 debacle are its glaring examples. Even ideologically committed leftist parties have not been able to spare themselves from this paradox. As their best chance of coming to power is at regional levels; the temptation is to define the class struggle at the regional level alone.⁸ The peculiar problems faced by the CPI(M) being a ruling party in West Bengal afford a very good example of the contradictory

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pressures faced by a regional party.

As a whole the existence and continuation of regional disparities at the outset do not allow either a national economy or a national politics. It helps to create different levels and patterns of politics. Second it gives rise to inter-state, inter-region and centre-state disputes and conflicts. It stimulates parochial, communal and sectional organisations and finally helps the traditional ruling classes maintain their control over the state power and thereby sustain the development

process maintaining status quo, resulting in concentration of economic power. But in view of democratisation and mass mobilisation, these contradictions cause political instability, social tensions, alienation of masses from the efficacy of the political system and ultimately a threat to national unity. Because of the uneven process of development, some ethnic groups move ahead more rapidly than others, and the latter (mostly indigenous population of an area), feeling out paced against the migrants and outsiders, are compelled to put at first claim to local resources and benefits. At the same time more developed regions also develop a vested interest and when there is sudden talk of maintaining regional balances they feel they are being discriminated against because of their having done well. Thus today in India large number of inter-state, inter-community and to a great extent Centre-State tensions are because of the persistence of regional imbalances. The need to adopt a developmental model for balanced development therefore is very important.

Notes

1. Pradhan H. Prasad, "Roots of Uneven Regional Growth in India". Economic and Political Weekly, August 13, 1988, p. 1689.
2. Ibid.
3. K.R.G. Nair, Regional Experience in a Development Economy Delhi, 1982, p. 131.
4. Paul R. Brass, The Politics of India Since Independence Cambridge University Press and Orient Longman, 1990, pp. 258-59.
5. Meghnad Desai, "India's Contradictions of Slow Capitalist Development" in Robin Blackburn (ed), Explosion in a Subcontinent, Penguin Books, 1975, pp. 31-32.
6. Sajal Basu, Jharkhand Movement, Shimla, Indian Institute of Advanced Study, 1994, pp. 6-9.
7. C.H. Hanumanta Rao, "Uttarakhand Agitation" Times of India, April 19, 1995.
8. Desai op, cit., p. 34.

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Secularism : Theory and Practice

Since its use first in 1648 at the end of Thirty Years war in Europe to refer to the transfer of church properties to the exclusive control of the princes, secularism has been a critically important development as a system of social ethics based upon a doctrine that as far as state activities are concerned, ethical standards and conduct should determine exclusively with reference to the present life and social well being without reference to religion. Secularism since then has implied, that there is no state support for religious bodies, no religious teaching in state schools, no religious tests for public office or civil rights, no legislative protection for any

religious dogmas and no penalty for any questioning of or deviation from religious belief. In this context a secular state is by definition one which sees individuals as equal citizens of a society in which no religious or social stratification are recognised as the basis for exercising political rights.1

In India, the concept of secularism acquires added significance. Being the world's most complex plural society India has been striving to weave a pattern of communal harmony and composite national existence. In Indian history there are many examples where rulers treated all religions with equal respect or irrespective of their own religious beliefs saw their subjects as equals.

The pioneers of the Indian National Movement, no doubt hoped to develop political nationalism to secure political ends irrespective of religious differences. In an age of rationality, enlightenment and socio-religious reform movements, they wanted to keep religion strictly at personal level and away from political principles. But since the national movement had to mobilise the support of all classes against foreign domination,

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the leaders of the different classes could not press the principle of secularism firmly for fear of losing the allegiance of religious minded and obscurantist groups. The merchants and the moneylenders in Punjab or the landlords in Bengal were soon to realise that their economic interests could be protected only with the blessing of communalism. The Congress cold-shouldered the cause of socialism in the same manner in deference to the vested interests whose support it could ill afford to forfeit.

The competitive interests in the Indian society exploited the religious, caste and regional divisions which constituted the source of communalism in Indian politics. According to Bipin Chandra, "the social, economic and political vested interests deliberately encouraged or unconsciously adopted communalism because of its capacity to distort popular struggles to prevent the masses from understanding the social and economic factors responsible for their social conditions and to turn them away from their real national and socio-economic interests and issues and masses movements around them. Communalism also enabled them to disguise their own privilege sectional, economic and political interests in the garb of communal ideology and religious identity and instead to secure for their interests not only a moral and ideological cover but also popular mass support inspired by religious passions. The leadership of the nationalist movement in the given situation lacked the political will to counter this communalism. The constraints of electoral political, though limited, introduced by the colonial government were formidable. So was the desire to achieve political freedom at the earliest.

Independence and Secularism

In independent India, in view of the religious diversity of society, the traumatic experience of the partition and the insecurity of the minorities, the concept of secular state was considered essential. However, right from the beginning there were differences about the two meanings of secularism. The first meaning of secularism becomes clear when people talk of secular trends in history or economics, or when they speak of secularising the state. According to this meaning

religion is not to be admitted in public life. One can have religion in one's private life : one can be a good Hindu or a good Muslim within one's home or at one's place of worship. But when one enters public life, one is expected to leave one's faith behind. Implied

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in this ideology is the belief that managing the public realm is a science which is eventually, universal and that religion to the extent it is opposed to the bellonion world-image of science, is a potential threat to any modern polity.²

In contrast, the second meaning of secularism revolves around the idea of equal respect for all religions. According to this secularism is opposite of ethnocentrism, xenophobia, and fanaticism. One could be a good secularist by being equally disrespectful towards all religions or by being equally respectful towards them. And true secularism, the second meaning insists, must opt for respect. It is this non-modern meaning of secularism which anti-colonial India stressed, given its concerns with mass mobilization and a broad consensus against the British rule. The meaning recognises that even when a state is tolerant of religions, it need not lead to religious tolerance in a society. For tolerance by the state can not guarantee tolerance by the society. State tolerance may ensure, in the short run, the survival of a political community; in the long run the community must go beyond it. This meaning of secularism recognises covertly what we are now finding out painfully, namely that the growth of secular or modern vested interests in a secular public sphere is an insufficient basis for the long-term survival of a political community. Otherwise the Scots and the Welsh or for that matter, some of the religious communities in India would not be creating so many problems for their countries.

Mahatma Gandhi was the most ardent advocate of this approach. He advocated non-interference by the state in the religious affairs of the people and profound respect for all religions. His prayer meetings were symbolic of this approach. This approach above all, won him the confidence of the minorities. The secular leftists of course viewed this Gandhian approach with suspicion at best and hostility at worst. Though not free from pitfalls, the approach had its own wisdom. The cultural ethos of our people require that we adopt our cultural rather than eurocentred idiom of atheistic secularism. Combined with an open and progressive mind, such an approach can be much more productive.

However, there is always a lurking danger in this approach. Religious conservatism can claim the better of this. In other words it can degenerate into utter conservatism blocking the

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process of change. This has been unfortunately the fate of Gandhism in this country. Gandhism could not play a creative role after independence either in the field of social justice or in the field of religion. Its real spirit died with Gandhi himself. Nevertheless, the Constitution of India adopted for this kind of secularism which comes out from Articles 25 to 30 providing for freedom of religion and protection of cultural and educational rights of minorities, as well as some other articles. First, it guarantees freedom of religion to individuals as well as to religious groups. Second, it guarantees equality of citizenship that is no discrimination on grounds of

religion (Article 15.1), equality of opportunity in public employment (Article 16.1.2), no discrimination in educational institutions (Article 29.2) and no communal electorate (Article 325), although there is special provision for reservation of seats for scheduled castes and scheduled tribes (Article 330.1 and 332.1). Third, it provides for separation of state and religion that is, no special taxes for promotion of religion (Article 27) and no religious institution in state educational institutions (Article 28). The provisions in these articles make clear that the intention of the Constitution is neither to oppose religion nor to promote a rationalisation of culture, but merely to maintain the neutrality and impartiality of the state in matters of religion.

In various cases the Supreme Court of India has reaffirmed that the concept of secular democracy is one of the basic features of Indian Constitution. In March 1994 in Bommai's case a nine-judge bench elaborated this concept. Among other things the Court laid down the following : One, Secularism in India does not mean that the state should be hostile to religion but that it should be neutral as between the different religions. Two, the neutrality of the state would be violated if religion is used for political purposes and advocated by the political parties for their political ends. From this premise flowed two vital conclusions : An appeal to the electorate on grounds of religion offends secular democracy and politics and religion can not be mixed.³ The bench attached such supreme importance to this principle that they went to the extreme length of upholding the Presidents Proclamation under Article 356 declaring that the BJP governments in Himachal Pradesh, Madhya Pradesh and Rajasthan should be unseated because the BJP government in

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Uttar Pradesh had been involved in the demolition of the mosque at Ayodhya.

Again while giving its opinion on Babri Masjid case in early 1995 the Supreme Court observed that it is clear from the Constitutional scheme that it guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasising that there is no religion of the state itself.... The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.⁵

The adopted model of secularism is premised on at least a certain degree of secularisation of civil society, in the sense of dissociation of religion, if not entirely into the private sphere at least into some very limited domains of public life. Secularism in this sense is also seen as a protection of minority rights. It is instructive that minorities in India despite being intensely religious and sometimes even fundamentalist, are among the most ardent supporters of secularism from which they primarily expect the impartiality and neutrality of the state.⁶

According to one opinion this meaning of secularism is purely negative. It is defined negatively as something which is not against religion. But what is religion? In the Constituent Assembly Debates there are frequent reference to 'true religion' which the founders desired that our Constitution should safeguard. When they spoke of true religion, the founding fathers were distinguishing it from superstitious beliefs and practices associated with religion. But in practice every religion involves faith or belief in some metaphysical proposition; a code of ethnics or a system of values; and prescription of rituals. Then when the theory of secularism talks of not

being against religion or of supporting all religions, does it mean religions in each of these aspects or only in respect of one or other of these three aspects? Or again, will it support some part of each not all? Thus, such a concept only gives birth to more problems.⁷ In sum the state in India is supposed to be not hostile to religion. It implies allowing all the existing and even new religions to flourish with the role of the state being one of active neutrality to their activities — a liberal interpretation of secularism which hoped to preserve and protect the cultural heritage of India while building a new nation on unity of faiths.

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Secularism in Practice

In the earlier years after independence, thanks to a number of fortunate circumstances, one could follow the logic of the more local meaning of secularism in Indian politics. But soon secularism began to be used merely as a slogan of opportunism. Neither the ruling party nor the opposition implemented it in its true spirit. Politicians in the name of equal respect to all religions started using secularism either to appease religious groups or mobilise people in the name of religion for creating vote banks. Unfortunately the law does not debar political parties to be organised on the basis of religion etc. Though electoral law prohibits appealing in the name of religion. In a judgement delivered on 17 July 1995 even the Supreme Court has given some leverage to this when it ruled that political parties which are identified with a particular caste, community, religion or language can seek votes to promote their cause without creating hatred for their adversaries. The three Judge bench observed they had recognised that there were several parties whose membership was either confined to or predominately held by members of some communities or religion and than an appeal made by candidates of such parties for votes may in an indirect way be influenced by considerations of religion, race, community or language. If the law recognised such parties such situations could not be avoided.⁸

What to talk of political parties even the government has been actively connected with religious activities and affairs. After independence many official functions have been accompanied by communal rituals. The Prime Ministers, Ministers and State leaders have been going to temples offering puja etc. There can be no objection to any state leader professing any religion and worshipping in accordance with its tenets. But that must remain a strictly personal matter. When it is publised in the mass media, it can not but weaken secularism. And that would still remain the position if the state leaders were to visit places of worship of other religions too, and these were to be publised in the same manner.

This type of equal respect to all religions by the state, in fact, creates more problems. To quote Chanchal Sarkar "in the name of secularism we observe the festivals of all the communities giving a developing country more holidays than

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perhaps anywhere else in the world. If, to meet a severe food crisis, we pass an austerity order, then churches, temples, mosques and gurudwaras are exempted for purposes of bhog or prasad. And our leaders do not think twice about particulating in a denominational religious ceremony at

the dedication of a dam or a factory, thereby offering a gratuitous, even if unintended, insult to other communities." Moonis Raza summarises it as "Pakistan is an Islamic theocratic state, India signifies Hindi theocracy Muslim theocracy, Christian theocracy and all the cracies put together."

Along with the other factors this notion of state participation has given birth to communal antagonism rather than creating an atmosphere of harmony as envisaged by the framers of the Constitution. The very process of the formation of sovereign state in such a situation, among other things, has stimulated sentiments of parochialism, communalism, racialism and so on; because it has introduced into society a new price over which to fight and a frightening new force with which to contend. When the state is viewed as a positive instruments for the realisation of collective aims the different people tend to organise on the basis of religion and language. It works because among other reasons, it is easier to organise small, culturally distinct groups than large multi-cultural class categories and because admittedly, state authorities would rather recognise cultural categories. In recent years a certain kind of perversion has crept up in this regard. Before a general election is held, the religious issues get projected and emotions are aroused. By virtue of the momentum so generated, the election is won. These developments have strengthened communalism. Even a decade or so ago, there was hardly any talk of what is called Hindu resurgence. Today the phenomenon is known as Hindu backlash and, more often than not, it is said or implied that the minorities have been getting away with all kinds of concessions and that the majority too has some rights. This is a new idiom which is being used on a large scale in independent India for the first time.

Thus while the constitutional framework provided a strong basis for the separation of democracy and religion, the actual practice of democracy has revealed that the practitioners of various religions have not internalised the Constitutional framework of India. According to C.P. Bhambhani there are two

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very important reasons for this. First, the absolute majority of Indians are extremely religious in personal life. A secular state in a highly religious society has to keep proving that it does not intend to hurt the religious sentiment of the citizens.

Second, India is not only a multi-religious country, but its believers are also very proud of faith and flincky about maintaining their religious identity. In this socio-cultural context, the functionaries of the secular state have to maintain equi-distance from all religions and at the same time they have to harmonise inter-religious social relations.⁹

In addition to that and to an extent because of this, the political as well intellectual class in India has become highly divided on the issue of the actual practice of secularism. Asgar Ali Engineer describes the major streams as follows.¹⁰ Firstly, there are those who interpret secularism in the western sense and context, its implications being strictly a religious approach to politics and state policies. We can include in this category leftists, liberals and rationalists. However, those under this category are in a small minority in our country. Secondly, there are those who interpret secularism as equal respect for all religions both in state policies and social behaviour. Gandhites

and some believers of religion can be included in this category. Speaking in a genuine sense, even those in this category happen to be in a minority.

Thirdly, there are those who pay lip service to secularism and interpret it in whichever way suites them politically. Politicians of all hues and colours can fit into this category. In fact, it is these people who promote communalism in the name of secularism and cause intellectual confusion and hence are more dangerous than those who are openly communal (though no one claims to be communal).

These politicians and political parties make opportunistic alliances on a caste and communal basis. It is as if they would make an alliance with the devil himself if it helped them capture a few more seats in elections. The Congress (I) and the Janata are known to have made alliances with the Shiva Sena in the Bombay Municipal Corporation thus giving it a great deal of political credibility. The CPM made an alliance with the Muslim League in Kerala, though of course it has broken the relationship now. Many secular parties, including a section of the Congress

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have alleged that the Narasimha Rao Government followed the policy of "Soft Hindutava" in dealing with the Tempal-Mosque controversy. One can give any number of such instances from different states and even at the centre. The candidates are set up not on the basis of merit and public record but on the basis of their caste and community which might ensure their chances of -winning:

In view of all this today there is widespread concern that Indian secularism is facing a serious crisis and that what came to be known as the Nehruvision consensus has collapsed as is collapsing. We find an increasing use of religion in the social construction of ethnic and communal identity which is made the basis for communal identity which is made the basis for the articulation of common economic interests and political mobilisation. There is also the contraction of an unprecedented pan-Indian Hindi consciousness that cuts across caste and regional divisions. This has often been described as the "Hindu Backlash", the Hindu reaction against the political mobilisation of other religious groups. There is little doubt that these movements are responses to a wider cultural crisis associated with modernisation that has also brought in its wake social dislocation and perhaps a pervasive sense of anomie. It is in this context that the attempt to re-examine Indian secularism is gaining prominence."

An Assessment

The experience of past 45 years in India suggests it is wrong to think that just with modernisation of the medieval society, with economic development and the secular pretensions of the government, the process of ascriptive identity building or the minority and majority problems can be liquidated. On the contrary it suggests that the realities of social and economic antagonism arising out of generation and articulation of demands in a backward plural society undergoing development through westernised capitalist path can give birth to a religious vocabulary. Hence the problems of communalism and parochialism having its roots deep in the historical events and human psychology cannot be solved by stigmatising this or that group. The

basic issue is, can we find a solution to communal and similar problems in a conciliatory political system? Of course

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the real cure must penetrate the social structure. But initiative can be taken by jettisoning the idea that secularism means equal respect for all religions by the state. Instead, religion will have to be ruthlessly thrust out of entry into public and political life.

It does not mean that secularism has to be equated with irreligion. Secularism as irreligion in Indian context is a questionable proposition on grounds both of practicability and desirability. The overwhelming majority of our people are neither atheists nor agnostics. They believe in one or the other of the traditional religions. In the situation, if a state is determined to be a totalitarian and thereby looking for limited and negative meanings only then it can be anti-religious. But if it is democratic then it need not be so. In fact in positive terms secularism means that "the rights of citizens are independent of their faith they profess and no man may be punished for his religion.¹² In this context secularism subsists on two fundamental convictions relating to the role of the state. One is repudiation of the totalitarian concept of the state, that is there are areas of human interest and endeavour wherein the state has no role to play. The other point basic to the concept of secular state is that as it is not a polity that lives in fear of ideas as other forms of polity could be deemed to do.

The plea, therefore is not oppose or even to ignore religion. A democrat or a secularist can not and must not dismiss religion lightly. At the same time, the very fact of religion being a continuous reality at social level calls for the state to be away from it, so that it can keep the rights and obligations of its citizens separate from religion.

What is required of state in India is to follow a policy of secularism and secularisation. Among the secular values basic to a secular society, are tolerance, social justice, economic welfare and equality before law. Religion is not antithetical to Science. But there is a contradiction between promoting a scientific temper and the rise of godmen, astrologers and the practice of obscurantist rituals. Nehru found the answer in science tempered by spiritualism — an inchoate term, but sufficiently understood as being a corrective to scientific absolutism.

It requires considerable understanding and sophistication to accept the proposition that India's unity rests on an acceptance of its rich diversity. India has to be shown to be a territorial idea

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that has the space and will to accommodate all its citizens and fulfil their aspirations for development, identity and growth. Universalisation of (primary) education, modernisation of traditional communities and occupation, the creation of accessible avenue for skill acquisition and the amelioration of living conditions in crowded city centres and squatter colonies are as relevant to defusing communal tensions as law and order measures or the puny efforts of the National Integration Council and the Minorities Commission. This is the direction in which we must move.

Notes

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Politics of Communalism

A "communalist" in traditional English usages is a person of altruistic compassion, attached to his commune or community, a person of deep social impulses and humanism identified with larger societal goals and community interests, "communal", "communalist", "communalism" are hence terms of approbation in the western context in contrast to the exclusively negative and pejorative construction put on the word in South Asia. Here term communalism, in general means the tendency of the socio-religious groups to attempt to maximize its economic, social and political strength at the expenses of the other groups. In other words, as it is known in India, Communalism can be defined as "the political functioning of individuals or groups for the selfish interests of particular religious communities or sects. The adjectival form "communal" is one of the most negatively weighed terms in the Indian political vocabulary. It is used to describe an organization that seeks to promote the interests of a section of the population presumably to the detriment of the society as a whole, or in the name of religion or tradition opposes a social change. It is thus an epithet implying anti-social greed and reactionary outlook.

In this context Prof. Rasheeduddin Khan suggests that Communalism is basically an ideology of political allegiance to a religious community as a primarily and decisive group in the polity, and for political action. Hence Communalism is a modern phenomenon, and not a phenomenon of the medieval past. It is a sectarian, restrictive and negative response to the process of modernization, and modern nation-building. Communalism envisages a religious community alone as a base and universe of its political ambition and action. For a communalist, the religious community is the only relevant and valid category in politics

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and in state affairs, and environment. For a communalist, a political system and the sub-systems like a party system and state craft, can and should be structured on the recognition of religious communities as the foundational grass roots and operational reality. Communalism is perception of other religions, communities as inimical entities within a polity and within a nation, arranged in an unfriendly, antagonistic and belligerent equation, one to another. Communalism is a political orientation that recognises a religious community, and not the nation and the Nation-States, as the terminal community, the final point of political allegiance. Therefore, Communalism is a political strategy, opposed to nationalism, as an aggregation of multiethnic, multi-religious and multi-lingual communities.¹ The most glaring manifestation of this is communal violence or riots.

It has been said that technological and economic development lead ultimately to the decline of communal conflict and that the emergence of new kinds of socio-economic roles and identities under cut the organizational bases upon which communal politics rests. But in India even after forty five years of independence, inspite of modernization, especially education and urbanization, the communal violence and frenzy not only continue but are assuming more serious dimension. The communities which have traditionally remained close, frequently interacting socially, to the extent of marrying and happily converting children to the fellow religion, have also been trapped in it.

Causes for Communalism

An analysis of the growth of Communalism and communal politics before and after Independence, reveals that the determining role has not been played by religion and culture but by non-religious and non cultural forces operating in the political and economic system. A careful scrutiny of the demands which have been made by communal leaders will reveal the true character and objective of communal politics under the mask of religion, culture and tradition. The communal leaders have aimed at protecting the interests of the lower middle class and urban intelligentsia. In this sense Communalism is a middle class phenomenon.² It can therefore, be easily suggested that Communalism had to be seen as a structural phenomenon of society and also as a strategy of the ruling classes to divide the masses for gaining maximum advantages and of the vested

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interests to reap purely economic benefits. Powerful group loyalties in a pluralist society functioning in the context of an economy of scarcity lead almost inevitably to intergroup rivalry and conflict. In this respect, conflicts in which language and caste defines the group identity have many of the same manifestations as communalism based on religious differences. This process is evident in India both because of the nature of colonial rule before independence and the developmental approach and cultural policy of the Government after independence.

Colonial Legacy

In the pre-British times the predominance of medieval forms of agriculture, primitive techniques, slow means of transport and communication, production largely dependent upon nature's bounty, domestic modes of industry and other factors created conditions of static life and self-sufficient isolated economy. Caste, clan, tribe and village were the inevitable forms of social organization in these economic conditions.

What the British rule did was to change some of these conditions; but it failed to modernise agricultural organisation and technique or transform industry which are the necessary conditions for the integration of social groups and growth of various nationalism. The unbalanced economic change induced social development of lopsided kind. Some of the obstructive customs and institutions remained e.g. caste, and the specter of communalism made its appearance in view of differential rates of mobilization among communal groups.

The consequence of communal groups being mobilized at different rates was that some people gained a head-start in competition for the scarce rewards of modernity. New socio-economic categories, therefore, tended to coincide with, rather than interact, communal boundaries, with the consequences that the modern status system came to be organised along communal lines. There was consequently, little to ameliorate the intensity of communal confrontation. The fewer the cross-cutting socio-economic linkages, the more naked such confrontations and the greater the likelihood of secessionists and other movements of communal nationalism.

Unbalanced development under colonial rule thus caused differential rates of mobilization. It brought old animosities to

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the surface and gave rise to alienation and hostility. To begin with Hindus and Muslims, in particular, tended to view the British consolidation of power in two different perspectives. For most Hindus, it appeared to be a transfer of political authority from an archaic to a modern set of foreign rulers. The adjustment to the latter was deemed to be easier and considerably more desirable for reasons of future development. Hindus were relatively more prone to reconcile themselves to the new political system as well as the general process of modernization. For Muslims the matter was quite different. They looked upon the British as the usurpers of powers. Muslims held the British responsible for the destruction of their political power. A feeling of humiliation and defeat persisted especially among the Muslim aristocrats, whose strongest centre was located in North India. With the decline of traditional crafts, the slow encroachment of the Hindu merchant and money-lending class the Muslim began to experience further hardship.

This position, however soon started changing. The new Muslim middle class dissatisfied at the disparity between themselves and the established Hindu middle class started looking towards the government. The government also started moving to a policy of conciliation towards the remnants of the precapitalist ruling class. The idea was to turn the Muslim aristocracy from enemies to the most steadfast supporters of the British regime. The main reason was that by this time the urban middle class, which happened to be largely Hindus, had started organising and challenging the British rule. This had culminated in the formation of the Indian National Congress in 1885. The rulers therefore started looking towards landowners, the so-called natural leaders of society who particularly in North India, happened to be Muslims as their allies.

The Muslim professional groups also feared that a campaign, supported by leading Hindu Congressmen to develop the Hindi language and to introduce the Devanagri script in the courts and government departments would place them in a disadvantageous position in government service, in journalism and in the legal profession.³ And finally the introduction of representative institutions and of open competition for Government posts gave rise to material fears amongst some Muslims. The persistent Congress demands for representative

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institutions and competitive examinations also aroused their hostility. Thus, a combination of religious, and more significantly, material fears led to the communal antagonism. Differential mobilization widened the socio-political cleavages not only between the country's major nationality groups but also between majority and minority communal groups within each administrative region such as Hindu-Muslim Sikh relations in Punjab and even between sub-groups of a single nationality like Brahmins and non-Brahmins in Madras.

There is also the factor of imperial diplomacy. The colonial administration sometimes encouraged the formation of conservative parties to oppose the more radical nationalist parties. Some Indian writings in fact, squarely blame the British Government for encouraging and fostering communalism arguing that the British introduced separate electorate, and granted special cleavages in Indian Society. This was alleged to be machinations of a "divide and rule" policy used to impede and finally to frustrate the ambitions of those who desired a free united India.

There is no doubt that the colonial rulers found that religion could be profitably exploited in their approach to the Indian people—communal divisions could be encouraged in order to keep the larger community divided against itself and ensure the permanence of their own dominion. To them horizontal division of the Indian people was not relevant. They totally ignored the vital realities of language, culture and classes of the Indian communities. They were not the authors of religious divisions but they utilized the division of religious feelings and the element of race to their advantage. They found Divide and Impera to be a useful motto and division of the Indian people along religious lines the bulwark of British rule in Indian people, to end their consolidation and unification and to disrupt the process of the Indian nation in the making.⁴

National Movement

The pioneers of the Indian National Movement, no doubt, hoped to develop political nationalism to secure political ends irrespective of religious differences. In an age of rationality, enlightenment and socio-religious reform movements, they wanted to keep religion strictly at personal level and away from political principles. But history moved on its own precarious course. The growth of nationalism came to be subjected to

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dialectical inevitability and attracted its anti-thesis within the form of communalism.⁵ In fact, the emergence of anti-imperial consciousness in India was very much linked with religious revivalism. It was because unlike European nationalism, Indian nationalism was not an indigenous product. We did not have radical and secular movements such as the Renaissance, the reformation and the enlightenment that Europeans witnessed. There was no French Revolution no Nepolionic war, not even the rise of a broad based middle class or the growth of industrial civilization which broke the stranglehold of feudalism. It was upon these and other developments that nationalism was founded in Europe whereas Indian Nationalism arose as a by-product of British occupation of India. Even the claim that we were a nation conscious of ourself in the bygone past was advanced only subsequently to the confrontation with the British. The British according to K.K. Gangadharan were instrumental in the development of three brands of nationalism in India. Their presence meant three things to India—a foreign culture, a foreign religion and a foreign rule. Resistance and rebellion to the foreign culture gradually grew up into a new brand of cultural nationalism.⁶ Even militant leaders of the Congress, like Tilak, Aurobindo Ghosh, Lala Lajpat Rai, etc., in the prevailing conditions and in order to arouse anti-British feelings among masses, used religious, platforms and festivals like Kali Puja. Ganesh Festival cow protection societies etc.

From 1920s onwards when Gandhi took over the leadership of nationalist movement he realised that to counter the powerful British rule was required mass mobilization and a sense of unity among the people from various communities and sects. He, therefore, attempted to develop amity and harmony among various religions and groups, particularly between Hindus and Muslims. His, success, however, was short-lived. First of all Gandhi's appeal was only at emotional level. He never attempted to develop a secular image of the Congress or the movement on scientific basis. Moreover Gandhi himself was a split personality. On the one hand as politician he was a shrewd strategist but on the other hand he was a deeply involved Hindu. Though he tried to create communal harmony on the basis of equal respect to all the religions, he never realised that his own utterances, actions and use of vocabulary like, "Ram Rajya" and cow

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protection, etc. as a leader could be misinterpreted by the people and elite from other religions, particularly in view of conflict in material and economic interests.

Nehru, of course, tried to analyse the situation objectively and dispassionately. But he also did not show any determination to create secularism in the real sense within the Congress. As such in view of Gandhi's inability to create communal harmony, use of Hindu religious rhetorics and symbols by militant leaders like Tilak, Lajpat Rai, Madan Mohan Malaviya etc. and halfhearted

attempts for secularization by leaders like Nehru kept on pushing Congress to be a Hindu oriented body. Though Congress denied this charge vehemently and attempted to remain a national and secular organisation it could not succeed in checking growing alienation among various religious, caste and cultural minorities. As such, to an extent, in the context of India, communalism may also be viewed as a consequence of the contradictions of Indian nationalism. It was inherent in the objective situation as it obtained after the advent of the British Raj. The Government, Congress and the political leaders of the Muslims all accentuated it.

The leaders of the national movement did not pay proper and sufficient attention to the problem of communalism. They lacked theoretical clarity and the will to wage consistent and persistent fight against the divisive forces. They spoke in changing styles and employed conflicting approaches according to the situation, wavering and vacillating all the time. Sometimes they compromised and when they decided to fight communalism, they fought half heartedly. The basic flaw in their approach was their conception of the community. They thought that every community in India was homogeneous and well-knit. And the 'communal' leadership was the authentic spokesman of the problems of the community. In 1888, at the Allahabad Session of the Indian National Congress, it was resolved that that "no subject shall be passed for discussion by the Subjects Committee or allowed to be discussed at any Congress by the President thereof, to the introduction of which the Hindu or Mohammedan delegates as a body object, unanimously or near unanimously". This Resolution practically evaded the issues in order to appease certain sections of the elite leadership. Whenever the Congress leaders thought of involving the minorities or religious

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communities with the national issues they looked to the Muslim or Sikh or Christian leaders and not the masses of those communities. They equated Sir Syed or Ameer AH who were the representatives of the upper classes of the Muslims, with the entire community. These Muslim leaders looked down upon the lower classes in their own community. Their concern was jobs and concessions for the educated sections. The League never had any mass base upto 1937. The Congress approach to communal unity was 'unity from above' and through 'middlemen'. The Muslim leaders who joined the Congress also subscribed to this notion. Hence there was an emphasis on 'pacts', "agreements", and 'conferences' etc.⁷ Since the national movement had to mobilise the support of all classes against foreign domination, the leaders of the different classes could not press the principle of secularism firmly for fear of losing the allegiance of religious minded and obscurantist groups.

The nationalist movement reflected the strength and the weaknesses of these interests in waging political struggle or in managing the provincial governments after 1937. It has also to be noted that the national movement lacked the political will to counter the forces of communalism. The constraints of electoral politics were formidable. The leaders failed to involve the masses in exposing the reactionary design of communal leaders. According to Bipin Chandra, "the social, economic and political vested interests deliberately encouraged or unconsciously adopted communalism because of its capacity to distort popular struggles, to prevent the masses from understanding the social and economic factors responsible for their social condition and to turn them away from their real national and socio-economic interests and issues and mass movements

around them. Communalism also enabled them to disguise their own privileged sectional, economic and political interests in the grab of communal ideology and religious identity and instead to secure for their interests not only a moral and ideological cover but also popular mass support inspired by religious passions.⁸ Jawaharlal Nehru used to describe communalism as a conflict between progress and reaction. It signified the unity of imperialism with the Jagirdari elements it opposed "all radical forces in the fields of social and cultural change and religious reform. It also opposed, socialism and social equality.

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Independence and Communalism

During colonial rule because of differential rates of modernization, competitive capitalism and exploitation of classes, which coincided with communal groups there arose a gulf between different communities. Soon these communities started considering themselves as separate nations. The coming of independence opened the door for further accentuation of primordial identity building and the tendency to fragment. A major factor in this was that with the removal of control by the colonial power the issue as to who was to govern whom came to be starkly posed as it generally had not been before. Moreover the expectations of the masses had been raised quite high.

Given the peculiar Indian conditions in dealing with the formidable problems of nation building the India required a new model of society—a society based on full respect for human liberties, on pluralism and on a better social deal for all. In order to meet effectively the challenge of modernization and meet the demands of expanding participation the leadership had to have both the will and the capacity to initiate, absorb and sustain continuous transformation. It also included providing facilities to each nationality to fully develop its own potentialities, providing full economic and social opportunities to the poor masses of that nationality. The Indian leadership, however failed in this. On the one hand their ambivalent attitude towards secularism and nationalities question and on the other its commitment to rapid economic growth and transformation through a model based on the postulates of capitalism and class reconciliation had given, along with other problems, an impetus to the growth of parochial and primordial sentiments. Added to this was introduction of electoral politics. In a situation of poverty, illiteracy and lack of awareness the caste, religion, language and region became handy tools of political mobilization for both individuals and political parties. In this background the communal question in India has become a complex one. It has developed ethnic, caste, regional, linguistic, religious and power dimensions. It needs, therefore, to be understood in that perspective.

Socio-Economic Basis of Communalism

As already mentioned that Communalism in its present form is a modern phenomenon and its roots lie not in religion

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but in politics and process of development. In fact to a certain extent the belated capitalist development laid the material basis for communalism. The imperialist domination was a great hindrance to the growth of indigenous capitalist class. In the given historical situation, the capitalist class of India could not become the bearer of modern ideology like rationalism or secularism. In the presence of the coexistence of pre-capitalist formations and capitalist mode of production and social relations, archaic communal feeling and identity survived. The dependency and the loyalist posture also sapped the revolutionary potential of the Indian capitalist class.

The other aspect of the economic component is the fact that resources are scarce and demands disproportionately heavy and ever-growing in the wake of continued population explosion. During the independence struggle, the people were fed on the idea that all their suffering and miseries were due to the alien rule and once the British left the country they would have an era of plenty and all their suffering would come to an end. This could have been achieved only if a new category of social institutions, new devices of social control, and also new agencies of social change, such as would meet the needs of a rapid and harmonious development of the economic and social life of the Indian people in consonance with the principle of equality of citizens were created. No doubt, instrument of planning was adopted and establishment of a socialistic society was proclaimed as the goal. But neither the politicians, who decided to try Five-Year Plans nor the civil servants and technicians, who prepared them had any definite theories in mind. As a result, planning became empirical, intended to provide answer to some urgent problems and to satisfy a certain hope and need. It became an instrument for state capitalism to provide cost-free infrastructure for the private sector.

Consequently, power in India is monopolized by a class which does not represent the masses of this country. The facade of democracy is maintained in order to rotate power within the rival groups of the same class. Poverty, ignorance, injustice and exploitation are inseparably linked with each other. The minority groups, particularly, are condemned to be unequal and discriminated in the politics of scarcity, more so in the field of education. A.R. Kamat is not wrong when he says that the

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backwardness in education is closely related to the economic and social backwardness and bears the same hallmarks of a society divided against itself.

It must be admitted that neither the founding father of the constitution nor the political elite have ever been serious about the economic and religious emancipation of the members of the minority groups. No justiciable article of the constitution ensures this. It should also be noted that the political elite among the minorities are concerned only with articulating the demands of the educated middle class segment or raise non-issues like personal law or renaming of a university etc. Such politics is a compromise with the "national" elite which is keen to accommodate them. This is how the facade of consensus in the polity is maintained. The breakdown of this pattern means the dissatisfaction of a section of the same elite with the total group style of performance. The participation or involvement of the common man implies nothing but legitimization of the elite rule. Even from the point of view of elite politics, let alone the real question of economic emancipation of the oppressed and suppressed ones, the performance of the system is absolutely

unsatisfactory. The minority leaders cannot come to the rescue of their communities, whatever position they may occupy in the system. Their approach betrays the worst kind of hypocrisy. The simple law of asserting their hold on the community as described by Marx, in a different context is to adopt a religious attitude to politics and a political attitude to religion. Secularism, therefore, has amounted to no more than political rhetoric and a compromise with religion for political gain.⁹

This provides an opportunity to vested interests, whether politically motivated groups or foreign agencies to ignite communal, cast and ethnic feelings. The conviction that minorities are vulnerable to discrimination, exploitation and suppression by those who control the state and its resources is very easy to travel in scarce resources society. It may be recalled here that most of the demands for constituting new states were primarily based allegedly on unfair and unequal distribution of development benefits and expenditure in the multilingualistic states. The reorganization of states on supposedly linguistic and cultural basis has not solved the problem in the absence of required economic and political action. For these problems are

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not exhausted by the mere acceptance of linguistic states. The unity of leadership manifested in the struggle for achieving such demands normally gives way to certain divisiveness among the elites when it comes to occupying power. As they settle down to the problem of delivering goods they find that they also cannot achieve all that they had promised. The people get disenchanted in the process. The leaders try to retain their support desperately by raising a new bogey, resurrecting a historic myth or forging a new and shifted alliances to meet the challenge of the counter elites. The best example of this is the developments in Punjab in the recent past.¹⁰

In general the economic crisis in our country is the crisis of underdeveloped capitalism in the Third World. The developed countries have a vested interest in keeping there countries backward because they are rich sources of raw material and cheap labour. They also provide a profitable market for their goods. Also, the elite in these countries are opening up their economies under the rubric of liberalization. This liberalisation creates a highly westernized, consumerism — orientated class of people almost indifferent to religious beliefs but cynically exploiting it for political ends. On the other hand, religious conservatism, and even religious fundamentalism attract the masses who are left high and dry. Thus a liberalized and westernised economy in a developing country also sows the seeds of fundamentalism. The ruling elite then use such an atmosphere for their own political ends and in the process strengthen the bases of fundamentalism and communalism.¹¹

As such communalism is nurtured not as much by religion as by the non-redressal of secular and genuine grievances of the masses which in the case of the minorities can be projected by the elite as discrimination based on religion. It is not faith but a sense of discrimination which creates a sense of unity. It is the feeling of insecurity, not of religion alone, which provides the sheet anchor to the notion of solidarity. It is the politics which acts as the leveller of sectarian differences and not the ideal of Islam, Sikhism or Christianity etc. The various studies of the political and voting behaviour of the Muslims for instance, bear it out. They also bring forth the

concept and difference between the Muslims elite perception of the political realities and that of masses.¹² Here it may be mentioned that no community in India

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is as homogeneous well knit and consolidated as its leaders wish us to believe. Every one of them is a divided community. In fact each of them has been witnessing intracommunity riots, in which the houses are ransacked and burnt. The religious places are attacked and even the priests are stabbed. If the economic and social policies of the system lead to concentration of power and deny equality of opportunity to the overwhelming majority of the people, belonging to all communities, discord and disharmony are inevitable. The formation of parties, political and other, on communal lines is one of the consequences of the prevailing distrust between the communities. In such a system the ruling class has a vested interest in dividing the people along communal and religious lines.

The Indian ruling classes, therefore, have always found religion, religiosity or dharmikta, as a recent coinage goes, most useful for reinforcing their hegemony, their ideological dominance and social control over the common people, making easier the latter's continued acceptance of an unjust and iniquitous social order. This has been well-secured through the typically Indian concept of secularism, defined as Sarva Dharma Sambhava (equal respect for all religions). Also their political parties have never been averse to the exploitation of religion, or communalism, to a greater or lesser degree, in their struggle for power at different levels in the Indian state. While there are problems galore, an increasing loss of credibility and even significant revolutionary developments in certain parts of the country, there is as yet no real or perceived threat from below to their political power or class domination. If these ruling classes, or their political representatives, are yet bargaining a strong tendency to scuttle even formal secularism for communalism and religious obscurantism, or for that matter even formal democracy for an increasingly authoritarian rule, this is indicative not only of a certain degeneration at the core of the Indian political system in recent years, but also of the feudal colonial inheritance of the new rulers of India.¹³

In pre-supposition of the well-knit and homogeneous communities, its association of Hindu Muslim, Sikh or Christian interests, and its reliance on religion for mobilising the people, comes in the way of changing the political status and the property relations. The opposition to socialism or communism is a salient

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feature of the communal economic doctrine. The communal concept of individual and society is very much in keeping with that ideology which sustains and promotes capitalism. The communal organizations hold private ownership as the law of nature; planning leads to totalitarianisms; economic class considerations are artificial; agrarian reforms and industrialization are unsuitable; and competitive enterprise should be guaranteed freedom. They also uphold the notion that the government's job is not to interfere in the economic sphere but it should merely provide guidance to industrial policy. All these principles are those of capitalist system which produces exploitation, poverty and inequality. One fails to understand as to why the communal

organisations consider right to property and competitive private enterprise so sacrosanct if they have the welfare of the poor Indian in their kind. It betrays either their ignorance of the nature of economic system or a deliberate attempt to make politics subservient to the interests of the few in the name of community.

The ruling class thus, has a major stake in the existence of communalism and communal organisations of different communities. These organisations divide the subalterns along religious and communal lines. However artificial these divisions may appear, they effectively impede the unity of the dominated classes—whose political and economic interests are identical. The ruling class is morally afraid of such unity as it constitutes the biggest threat to its rule. It has vested interest in dividing the people. In order to maintain disunity, the ruling class has been making shrewd and cold blooded calculations, often forgetting the costs of such ventures, Assam is a case in point. The root of the problem is under-development and this is ignored and a solution is sought in hardening the religious divisions— Hindu against Muslim, indigenous against migrant, plainsman against hill dweller, tribal against non-tribal, caste Hindu against scheduled caste Hindu. The standard strategy is to fight one communalism with the help of another communalism both at the inter community and intra-community levels : Hindu communalism with Muslim communalism, Jamaat-e-Islami communalism with Jamiatul Ulema communalism, Akali communalisms with extremist Sikh and Hindu communalism. It is in this context that the youth in India today show greater

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religious fervour fundamentalist attitude and nearness to linguistic, ethnic and communal identities than ever before. The period of economic crisis that is decade of 1980s has also been worst in terms of communal violence and is continuing to be so.

The Electoral Politics and Communalism

Needless to say introduction of universal adult franchise was a bold and revolutionary step on the part of members of constitution of India. However, after taking such an important step the founding leaders did not bother to create necessary conditions for the meaningful working of the system, nor they showed faith in people's capability to exercise the right to vote as conscious citizens.

The post-colonial Indian state, unlike its western counterpart, did not adopt the stance of completely expelling religion from public affairs and making it a private matter of individual citizens. On the contrary, with the Gandhian influence on its secular character, the Indian state took upon itself to be equally respectful towards all religions and at the same time not to let religion mingle with state affairs. India did not acquire a state religion but was equally disposed towards all religions. This gave an opportunity to leaders, particularly in the government to identify themselves with the people on the basis of their religious sentiments — both in negative and positive terms — and ask votes from them. For instance the Congress sought to assure the Muslims of the security of their religious identity if they moved under its banner. On the other hand even in the Nehruvian era coconuts were broken before ships were launched, yajnas performed before laying the foundation stones of the "temples of modern India" almanacs

consulted, Sanskrit hymns sung and holy tilaks applied on the foreheads of political leaders at public functions.

Thus, in India, increasingly cynical generations of rulers went about wooing the Muslim vote and, at the same time, trying to appeare the Hindu by a show of devotion and a parading of Hindu symbols. The seeds of poison planted at the time of Nehru grew into a tree during the regime of Indira Gandhi, flowered under Rajiv and born fruit under the dispensation of Narsimha Rao. And, it was not the Congress in its various avatars, that was the only political party guilty of trying to beat Jana Sangh at its game. The communists, too, put

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up people born of Muslim parents and bearing Muslim names as candidates at the time of elections in predominantly Muslim constituencies and nowhere else.¹⁴

Since Independence, most political parties have carefully carved out combinations of support bases in which the units of mobilization remain principally community, caste and linguistic and regional solidarities. The Congress has for long banked upon the support of the Brahmins, the Muslims and the Scheduled Castes and Scheduled Tribes on an all India scale, though there have inevitably been regional variations the BJP has stridently constructed upper caste Hindu fears of both the lower castes and the Muslims, and mobilized tradition, history, a cadre organisation that unabashedly derives inspiration from the Nazi apparatus, state of the art technology and the ideology of nationalism in its search for power in a modern political system— parliamentary democracy. The Muslim League in its new incarnation in independent India plays the old game of magnifying the insecurities of the Muslim community in India, though its support bases are region-specific. The Janata Dal, the Bahujan Samaj Party, the Samajwadi Party are all groupings of community and caste identities. The left parties, operating at least theoretically with the alternative category of class, while a significant presence, are nowhere near a decisive edge in the Indian polity as a whole. It is thus most political parties have most of the time operated the very modern political process with units that are survivals of the pre-modern past.¹⁵

As has been explained above due to continuous failure of state in fulfiling peoples socio-economic aspirations, the people have been getting alienated from it. The people defeated and battered in their life are forced to withdraw into their communities — kith and kin groups — and lean on the supportive structures within these for their livelihood and emotional sustenance. They recast their lives there and different articulation of their political preferences and demands take shape.¹⁶ And once people come to rely heavily on their community a strong bond develops between the two. Once this closeness builds up people react very strongly to something or someone made out to be harmful to the community.

The political parties are exploiting this sense of alienation of people also. It is in this context Ashish Nandy is right when

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he says, predictably riots organised in the name of religion have become some of the most secular events in Indian society. They are organised the way a political rally or a strike is organised in our system and, usually, for the same reasons — to bring down a regime or discredit a chief minister here or to help an election campaign or a facto there. Some political parties in India today have professionals who specialise in riots and, like true professionals, do an expert job of it.¹⁷

Deepening of Crisis

The consequence of the above is that today, the marriage of politics and religion has led to the growing incidents of communal violence. Mosques, Temples and Gurudwaras are being used not only for political mobilisation but also to stockpile arms and lethal weapons. The electoral politics — nomination of candidates, campaigning, communal representation etc. — has accentuated the process of communalism in almost all states. The masses are getting increasingly communalised. Worst is that communalism has entered bureaucracy and police forces also in a big way.

In an article Praful Bidwai tells that on the night of December 6, 1992 at Lal Bahadur Shastri National Academy of Administration at Mussoorie, a jubilant group of probationers, then only a few months into the 58th Foundation Course for the elite hand picked to join the All-India and Central civil services, had thrown a party to mark the demolition of Babri Masjid. The revelries drew over two thirds of the 225 probationers then at Mussoorie. Quoting the Academy's house journal Bidwai points out, "the Academy is training and legitimizing the induction into the top rung of the bureaucracy the people whose views and prejudices, convictions and biases are wholly incompatible and irreconcilable with the principles underlying a pluralist democratic order and a constitution based on it.¹⁸

A study of communal bias in the police by a senior police official Mr. Vibhuti Rai shows that there is enough evidence available to prove that such a bias exists. He has cited instances from U.P. and Bihar to make his point. In Bombay, the reluctance of the police to deter frenzied mobs killing Muslims in January 1993, and from looting and burning their property led to the barbaric bomb blasts of March 1993. The killings of innocent Sikhs in Delhi after Mrs. Gandhi's assassination was yet another

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example of police ineptitude.

The situation, as a whole, is grim. Communal and quasi-religious gangs are emerging as a political force in the country. Elections are witnessing mixing of politics with religion. Religious passions are being whipped up for the sake of political power and communal issues are blurring and real issues of socio-economic transformation.

Need For Intervention

The experience of past four decades in India suggests that it is wrong to think that just with the modernization of the medieval society, with economic development and the secular pretensions of the government process of ascriptive identity building or the minority and majority problems can be liquidated. On the contrary it suggests that the realities of social and economic antagonisms arising out of generation and articulation of demands in a backward plural society undergoing development through westernized capitalist path can be marked by a religious vocabulary. Hence the alleged problem of communalism or parochialism, which is a normal human phenomenon having its roots deep in the historical events and human psychology cannot be solved by stigmatizing this or that group. The basic issue is, can we find a solution to communal or such problems in a non-mobilized and a conciliatory political system, like the one in India ? Perhaps some thing can be done by having more discipline among party leaders and workers on sectarian issues and other similar measures but the real cure must penetrate the social structure itself. Already a point of contradiction has been reached today between the available administrative structure and the level of socio-economic development of the people, between the legitimate expectations for growth and the inadequacy of the political arrangement that impedes such a growth. The experience so far has proved that the adopted approach has failed to deliver goods to the common man belonging to the so-called minority or majority. Given the present model and the relationship between production and distribution in the world, given the western style of industrialization we are pursuing, we may produce nothing but consumerism, corruption, revolts, disorder and ultimate the collapse of the democratic order.

The only alternative, therefore, is that the transformation of the social system and economic development have to go

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together. A political system based on the concept of freedom will survive in the measure in which values are generally expressed in everyday life and in opportunities of common people in human and social relationship at the level of the community. There can be no success in the system unless it envisages justice to all ensures equality in practice. Economic equality and justice are the basis of integrated society. It presents a vital and unifying goal, and is a necessity for harnessing the energies and initiative of the people in all fields of activity. The solutions have to be economic and political and not legal or administrative. The problem should be tackled at that level. Without this, high-sounding exhortation and platitudes like "unity in diversity" or "composite culture" will be of little help in achieving the goal of national integration.

Let us keep in mind that adherence to religion and a religious system is not communalism. Exploitation of religion is communalism. Attachment to a religious community or religiosity is not communalism. Using a religious community against other communities and against the nation is communalism. Indulgence in ritualism, superstition, obscurantism, magic, charm and occult practices like astrology is not communalism. They are merely irrational, unscientific and primordial orientations, due to conformism to traditions, or fear of the unknown and for unbound ambition. Even commitment to conservative values in social life and conservative orientation in politics is not communalism. It could be called social backwardness and political reaction. However, it should be recognised that all these aspects can be inputs into the development of communal consciousness, and indeed the communalist in various permutations and

combinations, have utilized most of these aspects in order to build their communal political base.¹³

At the same time in general the masses are religious, not communal. There are also well meaning religious and secular leaders in all the communities. The religious and secular leaderships of these communities should come together and form solidarity committees to fight communalists in whichever community they might be. For this it would be necessary to do honest and rigorous criticism of what is bad in one's community and acknowledge with generosity what is good in the other community. Such an approach can build the bridges of

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understanding and mutual confidence. Of course, above all is required development of a scientific outlook that encourages democracy and humanism. A genuine democrat is essentially a rational individual his self appreciation depends on the assessment of his own individual merit and not on the merit of any social group in which he may happen to be included. Communal sentiments will lose their strength in India in proportion to the growth of democratic and humanistic values among the Indian people. And for this intellectuals and concerned citizens will have to intervene in the politics effectively.

Notes

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17. Ashish Nandy, "Secular Nature of Communal Politics" The Times of India, May 21, 1994.
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Caste and Politics

Today among the divisive forces which afflict our national life, disrupt the bonds of unity among the Indian people and affect its development, cast is the major one. The frequent instances of caste confrontation, leading even to occasional outbursts of violence both in urban centres and the country-side force themselves on our attention. The issue of reservation in services and higher educational institutions on caste basis raises a storm every now and then. When during elections, the political and programmatic appeal does not become the central issue, we witness a rising tide of caste identification and caste animosities.

The last ten years, in particular have seen a major change in the role of caste. Earlier it was important in the politics of South India. But now it has gained very strong foothold in the politics of North India also. While the influence of caste has been decreasing in social and economic spheres it is gaining a stranglehold over the field of politics. In the last decade a new focus of caste politics has emerged. Together with its attendant spin offs—the emergence of new caste-based organisations, growing polarisation along caste lines, violence and reservation conflicts—the caste has embedded itself firmly in politico-economic fabric of the country. To understand and analyse this increased role we have first to see what the caste system is and how it has developed as a politically significant variable.

Caste System

While caste reigns supreme in the innumerable classes and divisions of Hindu society encompassing all aspects of the life, no precise definition of caste is available. Scholars find numerous difficulties in arriving at a commonly acceptable definition. One finds a lack of distinction between Varna and Jati. Also there are different perspectives to the analysis of caste stratification. That

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is why J.H. Mutton said, "The truth is that while a caste is a social unit in a quasi-organic system of society and throughout India is consistent enough to be immediately identifiable the nature of the unit is variable enough to make a concise definition difficult." In fact even to the practitioners of caste themselves the meaning of caste varies from context to context. To him, caste has a specific and particular meaning in a village society where he interacts, every day with other members of the society. However, the meaning and caste identification change when he interacts at district or state level.¹ It is often alleged that caste distinctions are similar to the civil and social distinctions of European and other nations; but one finds an essential difference in its hereditary character. Indian caste is derived from birth alone. It cannot be transferred from one class to another cannot be gained as a reward for the highest merit or bestowed as an honorary title by the most powerful monarch.²

Notwithstanding the difficulties in defining the term, most of the sociological writings on caste conclude that homo hierarchicus is the central and substantive element of the caste system which differentiates it from other social systems-particularly that of the West. In other words the caste system in its most general but fundamental aspect can be described as ascriptive system of status and hierarchy, known for controlling and defining social, economic and political relationships for the individuals. In its extreme form, caste stratification subsumes all other stratification systems and is therefore termed as homogenous or non-complex system. As the caste status is ascribed by birth, the system is thereby closed. In this model, internal differentiation among the persons belonging to the same caste is absent. All members of the same caste are alike that they have the same levels of ritual, socio-economic and political positions. On the other hand, it envisages a complete vertical differentiation between individuals belonging to different status castes. Different castes, thus differ from each other in ritual, socio-economic and political positions. It also marks non-antagonistic strata i.e. acceptance and legitimacy of the ritual determined position in the allocation of wealth, status, and power. Thus the system is non-competitive and its essential features are : (1) hierarchy; (2) commensality; (3) restrictions on marriage and foods; and (4) hereditary occupation.

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It may be pointed out here that though to an extent the origin of caste-system can be traced to the theory of varana, it is not synonymous to varana system. In fact the sacred books of the Hindus contain no uniform or consistent account of the origin of castes. Sociologists generally trace the origin of caste to the causes of (a) differences of race, (b) differences of employment, and (c) differences in geographical locate. However it is also suggested that the caste system with its

barbarous inequalities, penalties and disabilities is the natural offspring of the Varnashram Dharma.

Since our concern here is not to discuss the caste system itself, suffice it is to keep in mind that there are a large number of castes though their precise figures for any region and the country are not available. Theoretically, each caste has a definite place in the social hierarchy. Its place in the hierarchy is determined by its ritual status based on the observance of religious values and its hereditary occupation. However, the caste hierarchy has never been static throughout history. Though the upper castes have successfully tried to improve their status. Having improved economic condition, a dominant section of some of the low castes, including the groups which were at one time treated as untouchables, imitated customs and norms of the upper castes.³

Caste-class Equations

In view of and in addition to the ritual hierarchical order of the caste system, several scholars have categorised castes in terms of upper and lower as equivalent to class divisions. The studies of K.N. Raj, Andre Betuelle, M.N. Srinivas and Kathleen Gouch confirm the fact that there is a correspondence between caste and class, that the rich landlords and peasants come generally from the higher castes such as Brahmins, Bhumihars, Rajputs and Thakurs while the Harijans, Adivasis and tribals contribute the bulk of agricultural labour. At the intermediary level, however, caste and class cut across each other. A majority of members of the middle castes such as Jats, Gujjars, Yadavs and Kurmis, are small and medium peasants and/or tenants, though there has been a trend for a movement upward. Some from among these backward castes have emerged as big tenants with big leases and have come to own some land, a few have also become big peasants with large parcels of land. This is especially true of northern regions like Rajasthan, U.P. and

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Gujarat; but is also becoming visible in the South as in Tamil Nadu and Karnataka. The middle and backward castes thus constitute the bulk of the medium and small peasants. By and large the very small land holding poor peasants come from the lower castes and also work as agricultural labourers.

In this context Mencher writes, "looked at from the bottom up, the system has two striking features. First the point of view of people at the lowest end of the scale, caste has functioned (and continuous to function) as a very effective system of economic exploitation. Second, one of the functions of the system has been to prevent the formation of classes with any commonality of interest or unity of purpose." As such caste is a system of exploitation rather than a system of interdependence and reciprocity. Caste stratification has been deterrent to the development of "class conflict" or "proletarian consciousness". This is because "caste derives its validity from its partial making of extreme socio-economic differences. "Those who have emphasised a study of the Hindu value system to analyse caste have illustrated that untouchables and other lower sections of Hindu society "see their advancement in caste rather than class terms." Harper's study of untouchables maintain that they (untouchables) seek to gain in prestige by their assumption of behavioural attributes associated with higher ritual rank, such as abstinence from beef-eating, as

well as from their greater bargaining power on economic interaction, including a refusal to perform ritually degrading tasks. They seem not to reject the idea of a hierarchically ranked society, but to dispute their position in it by adopting several attributes of proper "Hindu behaviour" and attempting thereby to have achieved substitute for heredity as a basis of rank.

K.L. Sharma points out that the most crucial point of consideration is that classes "are not found as a system of stratification in the same way as castes are entrenched in Indian society, and that most of the "problems created by the caste system are still of class nature, related to economic domination and subjugation, privileges and deprivations, and "conspicuous waste" and bare survival. These problems are essentially those of the "Haves' and the "havenots', and one cannot locate these as concrete groupings in a strictly Marxian sense, as class-antagonism, class consciousness and class unity are not present.

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Thus, India's situation is very different from other societies in the sense that the problems are of a class, as divisions of society are not found as concrete functioning units.⁴

Caste and class, therefore, Ghanshyam Shah points out, are neither distinctively separate categories, nor are they one and the same. First, caste or jati is essentially a localised social groups where members share common socio-cultural bonds. Despite several efforts, no all India caste organisation has so far come into existence. Second, caste does not just form a social group. The caste-based social system originated with the development of economic surplus. Production and distribution systems have remained caste-based for centuries, notwithstanding intra and intercaste mobility and regional variations in social hierarchy. With the introduction of the capitalist system and the consequent penetration of capital, as well as the competitive political system, certain changes have taken place in the features characterising the caste system. Production is no longer based on caste thereby weakening the rigid hierarchy of the system.

Also, caste no longer plays a multiple role everywhere. Economic differentiations within each caste have thus become sharp. Except for a few castes which are economically homogeneous, especially in the case of lower castes, caste members do not necessarily have common economic interests. Different strata of the same caste pursue different and at time opposite economic interests.

Nonetheless, social bond perpetuates caste consciousness and consequently divisions among the subordinate classes. It is not, however, a major stumbling block in the unity of the upper caste-class in the economic sphere. Such a situation works to the advantage of upper caste/class entrepreneurs who can seek the support and mobilise their poor caste brethren in their intra-class faction, fight. Whenever needed such support also legitimises the dominance of the haves over the havenots. This does not, however, prevent the former from ignoring the caste bond when it hinders their economic and political activities.⁵ The reality of the caste in a democratic system was both considered as a stumbling block as also important mean for political mobilisation in the absence of other types of political consciousness.

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Caste and Politics : Colonial Period

Caste has always been a potential and actual weapon in keeping the people divided and weak in the face of any challenge. More than a hundred and fifty years back Marx remarked, "How came it that English supremacy was established in India ? ...A country not only divided between the Mohammedan and Hindu, but between tribe and tribe, between caste and caste, a society whose framework was based on a sort of equilibrium, resulting from a general repulsion and constitutional exclusiveness between all its members. Such a country and such a society, were they not the predestined prey of conquest ?"⁶ British rulers, themselves, commonly argued that caste Hindus and untouchables and other low castes could hardly be expected to work together as equals in a democratic political order, that the former would maintain the rigidity of traditional hierarchies and caste discriminations which would prevent the poor and disadvantaged low castes, from participating effectively in politics.⁷ Nevertheless, during the colonial period itself the existential realities of cast system began to be different from its typical ideal form.

A number of changes brought by the British rulers in Indian economy and administration significantly affected the "essence" of caste system. The introduction of liberal education, new modes of recruitment in factories and offices, creation of legal rights underlined the individual aspect of man rather than the "jati" or "community". There also were emerging concepts like secularism, liberty, equality and democracy which challenged the principle of inequality. These new ethos also found reflection in social and religious reform movements which deprecated the caste system and ideals of purity and pollution. The new economic opportunities that the British government opened through industrialization and jobs in the government disturbed to some extent the association between caste and traditional occupation.

While on the one hand, the traditional aspects of the caste were getting changed, on the other hand caste was acquiring new dimension and functions - political. For administrative purposes, the British government had brought a good deal of improvement in communication. The immediate effect of this, writes Srinivas, was that it increased caste consciousness and inter-caste competition. This happened because now it was possible for the caste relations to outgrow its regional constraints

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and develop caste association so as to bargain for some concessions from the British government on the plea of backwardness in order to catch up with the advanced castes. At the same time the caste associations worked for elevation of social status. This backwardness was claimed in the secular context and a high status in a ritual context. This was a new dimension and function of caste, unknown before.

Thus we find that the caste system began to acquire new functions and dimensions in the changing social, economic and political ambience of the pre-Independence period. It undermined the vocational basis of caste, its economic rationality, its interactional restrictions and its spatial and political isolation. However, changes in the caste system notwithstanding, the grip of this institution on the social matrix didn't loosen to any appreciable extent. Caste continued to persist, albeit in a different form — from its feudal embodiment⁸.

In the nationalist movement the modernists led by Jawaharlal Nehru saw the caste system as an unmitigated evil, the main source of India's social, political and even moral degeneration. The critical traditionalist led by Tilak, Vivekananda and Gandhi pleaded for its reform. While acknowledging that castes had divided the Hindus and degraded large sections of them, they insisted that they had also held Hindu society together, preserved some of its central value and been a source of moral, social and emotional support. What was more, an institution that had lasted so long and struck such deeproots in the Hindu way of life and in which the Hindus had invested so much of their moral and emotional energy simply could not be "abolished". It has to be approached gently and reformed from within. Nevertheless there also emerged strong and some very effective anti-caste movements, particularly in South India. The national liberation movement, in general, by mobilising the forces of the Indian people against the alien rulers, by focusing their anti-imperialist consciousness was able to relegate caste divisiveness into the background for a time, though even then a good deal of controversy was generated over the question, whether the struggle for social reform took precedence over the political struggle, or vice versa. After achievement of independence and introduction of electoral politics in a traditional society caste gained a new role for itself.

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Caste and Independent India

After independence many qualitatives changes were introduced in the political system. Democratic polity based on the principal of adult franchise was perhaps most crucial factor which reinforced caste with a lot of vigour. According to Moin Shakir there is dual role of caste in the Post-Independence era, that is democratising system and hampering the rise of evolutionary class organizations. The type of mass politics operating after independence is radically different from that of British India. The compulsions of the democratic system, to mobilize the illiterate people, who cannot understand politics in terms of class interests, make it imperative appeal to the caste sentiment because it pays dividends. In the absence of clear-cut class based parties or because of weak communist and socialist movements in the country factors other than ideology and class are bound to be more effective. It activises primordial institutions. Thus caste, religion etc. become relevant inputs in the mass politics of India.

As regards the mobilization of the people on the basis of castes, Rudolph and Rudolph say that there are three types of mobilization : vertical, horizontal and differential. Vertical mobilization is the marshalling of the political support by traditional notables in local societies that are organized and integrated by rank, mutual dependence and the legitimacy of traditional authority. Horizontal mobilization involves the marshalling of political support by class or community leaders and their specialized organizations. Differential mobilization involves the marshalling of direct or indirect political support by political parties (and other integrative structures) from viable but internally differentiated communities through parallel appeals to ideology, sentiment and interest. Political implications of this development are recruitment of leaders, provision for political personnel, legitimization of the traditional authority pattern and creation of group consciousness and divisions along narrow sectarian lines.⁹

The primary function of caste politics, suggests Moin Shakir had been to transfer authority from the higher to the middle castes. Those who were the lowest of the low-untouchables, landless peasants, rural poor—were not benefited by this new political arrangement. The class interests of the emerging rural

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elite could best be protected through an alliance with the urban bourgeoisie. Thus adult franchise democratic decentralization, Panchayati Raj institutions have, in practice, helped the ruling classes in consolidating their rule by using caste in Politics. The new rural and urban elites have developed vested interest in the perpetuation of 'caste in politics'. Irawati Karve rightly points out that politicians who enjoy privileged position aimed at perpetuating the operation of caste to seek sanction for their power in social system which possess a great inequality in status, worldly goods and opportunities. In the rural context, 'caste in politics' has been the instrument of mobilization, a channel of communication, representation and leadership which links the electorate to the new democratic process. This inter-relationship frees the lower castes from exploitation and victimisation by other castes.¹⁰

To what extent caste has become a means to level the old order, inequality is, of course, highly debatable issue. But there cannot be gain saying the fact that caste has provided 'substance to polities'. Be that politics bourgeoisie or revolutionary, at the present it does not matter because both lines of politics have used the caste factor for its political purposes. It will be proper to recall here that even the communists in India used caste idioms for mobilising the class of agricultural labourers in Andhra election in 1950s and elsewhere also, on the ground of caste-class correspondence. And later on, Congress used the same caste idiom to arrest influence from the hands of the Communists. The point that is to be noted is, that in caste one finds an extremely well articulated and flexible basis for organisation — something that is also available for political manipulation and one that has a basis in consciousness. The style of functioning of the various political parties proves the validity of the caste factor in the selection of the candidates at the time of elections, formulation of campaign strategies and manipulation of votes show that they are not interested in banishing casteism but are pragmatic enough to make the political processes intelligible to the over-whelming majority of the electorate. They are realistic to accept that the stress on caste should be more at the Gram Panchayat level and less on the state level and negligible at the national level.

Many authors suggest that these developments are not

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simply to be deplored as the deterioration of party or politics, but if anything to be hailed as the adaptation of caste to the modern bargaining democracy. According to them, the caste associations, representing the adaptive response of caste to modern social economic and political changes combine the traditional and the modern. As various caste communities have sought social uplift and economic advancement, they have organized themselves to secure more effective political access. The caste association, according to Lloyd I and Susanne H. Rudolphs "provide the channels of communication and bases of leadership and organization which enables

those still submerged in the traditional society and culture to transcend the technical political literacy which would otherwise handicap their ability to participate in democratic politics.

The meaning of caste itself has changed in the encounter between tradition and modernity. But creating conditions in which a caste's significance and power is beginning to depend on its numbers rather than on its ritual and social status, and by encouraging egalitarian aspirations among its members, the caste association is exerting a liberating influence. Writing about Kerala, even the Marxist leader, E.M.S. Namboodiripad argues that the caste association was "the first form in which the peasant masses rose in struggle against feudalism. "As he rightly suggests, however, such associations consolidate community separatism and must be transcended if the peasantry is to be organized as a class". For quite often the caste dilutes the programmatic and ideological aspects of the parties. More importantly it does reduce the strength and impede the activities of the business, kisan workers and other types of interest groups.

In this context an important development is that lower castes have become significant in elections. Leaders of all the major parties and formations agree that the crucial Dalit vote can make or break their fortunes. In fact a new phase of Dalit assertion had begun in states such as UP, Punjab, and M.P. The Dalit Shoshit Samaj Sangharsh Samiti (DS-4) was set up by Kanshi Ram in 1982. In 1984 Bahu Jan Samaj Party (BSP) was formed by him. Since then BSP has emerged a significant force. The various Republican Party of India (RPI) groups in Maharashtra have also recently united. The RPI, formed in 1956 by B.R. Ambedkar was a larger experience and a richer intellectual tradition to

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draw from. It has witnessed radical militancy under the Dalit Panthers in the 1970s producing an inspiring and vigorous Dalit literature¹¹

It is also important to understand that it is the persistence of feudal relations and the very retarded growth of capitalism that is responsible for close caste-class relations being obtained still in India rather than any ritual or numerical status. Working within the framework of direct, personal subservience, often the villagers vote as a near unity irrespective of higher/lower caste divisions. This is where the caste affiliation of the rich and medium land owners become important, though numerically they form only a small percentage of the total rural population or even among the agricultural population. The concentration of specific castes in specific regions helps them to carry more weight with the lower castes in the villages. Equally the coming together of various middle and lower castes on the basis of the common interest of the peasantry class, has helped this groups to further consolidate themselves.

Caste and Elections

In view to the above the caste has started playing very significant role in electoral politics for two reasons. One back in 1950s, India's newly franchised were not aware of the power of their numbers, although they made up majority. That is changing and ever more rapidly. Now the under-class knows that vote is the most potent weapon of all in its hands. Over the past few years, India's low placed have made their influence felt in organized politics as never before. In

fact there has emerged a cognitive revolution in the minds of the untouchable and the lower castes. With government having failed to ameliorate their conditions, the deprived are taking matters into their own hands, armed with the realization that only their own activities will undo injustice. They, therefore, no longer allow landed elites to tell them how to vote, as they often did in the 1950s. Their protest, of course, also invites individual and groups atrocities perpetrated by higher castes and classes.

Second, there is also emerging conflicts within ruling classes particularly between the rich peasantry and urban industrial classes. In this for gaining hegemony within ruling bloc political competition based on issues and ideological considerations has been eschewed to a process of an ethnic game replete with "vote

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banks." Parties of all hues cultivate their socio-economic constituencies and nurse their vote banks. Vote banks are sought to be created through regional, linguistic, religious and above all caste appeals. The phenomenon particularly gained importance in mid-1960s. Charan Singh was among the first leaders to recognise the electoral potential of peasant castes and worked assiduously towards consolidating it. Karpoori Thakur in Bihar was another leader to articulate the Other Backward Castes (OBCs) in particular. After 1969 Congress split Mrs. Gandhi also tried to rely upon the support of backward caste leaders. The Janata Party victory in 1977 elections, apart from slogan of restoration of democracy, was built principally upon a coalition of three major social forces—the middle and rich peasant castes, the Muslims and the Scheduled Castes.

The 1978-79 struggle, on the issue of reservation for the "backward" castes (which was aided by the chief ministers of Uttar Pradesh and Bihar) during the Janata Party rule, opened the eyes of the middle and lower-middle castes to the realisation that until they took political power in their own hands, nothing would be done genuinely for their upliftment. Changes in the traditional power hierarchy, also brought conflict, sometimes violent, between the rising, yet so called "backward" castes and the Scheduled Castes. The latter, with marginally greater access to education and a relatively better economic situation, were now able to protest against their victimisation and exploitation by the newly dominant castes. The tensions of caste society were accentuated by the new found economic prosperity of certain groups who gave up old practices of merely imitating the upper caste culture (the process of sanskritisation) and got prepared for direct political confrontation. In response, the traditional upper castes, who continued to dominate governmental, economic, political and social resources, tried to meet the challenge of the rising middle castes.

At the same time, the upper segment of the OBCs comprising Ahirs, Kurmis and Koeris have become the principal beneficiaries of the green revolution. Consequently, they have emerged as an affluent section within the OBC combine and have effectively flexed their political muscles.¹² The Yadavs, a large group in Uttar Pradesh (roughly 12 per cent of the population), had over the years so strengthened their hold on

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politics as to alarm the Jats into action. The impression of a Yadav-led backward caste revolt is further strengthened when we review the situation in Bihar, the second most populous state in north India. The Jats as a community are conspicuous by their absence in Bihar. There the Yadavs constitute the largest agricultural caste. After the Muslims and Scheduled Castes they are the largest single group in the state being around 11 per cent of the population.¹³

The Janata Dal launched in October 1988 with the merger of the Janata Party, Lok Dal and the Jan Morcha clearly showed that apart from its concern for so-called clean politics it represented essentially a bid by the OBCs for power at the Centre.

Thus, Mr. V.P. Singh decided to adopt the only readymade constituency available to him. But understandably, he had to make the right noises as regards the under-privileged groups. So while Mr. Devi Lal revived the AJGAR (Ahir, Jat, Gujar and Rajput) formulation (first propagated by the legendary pre-independence Harayanvi politician, Sir chottu Ram and latter practiced by Choudhury Charan Singh without ever using the term (AJGAR) Mr. V.P. Singh had to couch this in a different language by talking about giving 60 per cent of Janata Dal tickets to SCs, STs, and OBCs.¹⁴ Statistically speaking, the AJGAR alliance is about as numerous as the Congress's traditional base of the Brahmins, Harijans and Muslims. But while Charan Singh, a Jat never succeeded in attracting significant Rajput (Thakur) following, with V.P. Singh at the helm of affairs and restless because they had not been content with the share in power, they had enjoyed in recent years under the Congress dispensation, substantial number to Thakurs also started rallying under Janata Dal.

The Congress's response to V.P. Singh's AJGAR was to float a parallel AJGAR. The induction to Mr. Satyendra Narain Sinha (a Rajput) as Bihar Chief Minister, the importance lavished on Bir Bahadur Singh's progeny in Uttar Pradesh, the crucial role played by Mr. Rajesh Pilot (a Gujar) and the wooing of Yadav leaders like Mr. Ram Naresh Yadav, all pointed to the efforts at setting up a rival AJGAR. But as pointed out earlier these sections had deserted the Congress long ago.

Thus the Janata Dal in 1989, by and large, gathered the support of non-Brahmin upper castes and newly awakened

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middle castes like the Rajputs, the Jats, the Yadavs, the Kurmis, etc.

The Janata Dal in order to convert its large social base to be converted into an electorally available political base produced a more pronounced sectarian image, defined by its position on the Mandal Report and on the Mandir-Masjid issue. In the process the issue of reservations, a principle that was meant to be a part of the social engineering to restructure the Indian society, was reduced to mere political gimmickry. By doing so the Janata Dal, together with its allies, had hoped to win a secure majority on the strength of its belief that the OBCs, the Scheduled Castes and the Muslims would firmly rally behind it (the OBCs, the Harijans and the Muslims form nearly 44 per cent, 16 per cent and 11 per cent of the total electorate). It therefore expressed its willingness to force the mid-term elections more than any other party.

The analysis of 1991 and 1996 elections point out that the loss of seats not with standing and inspite of distortions because of high pitched Mandir campaign and sympathy factor the social base of the Janata Dal among the rising peasant and artisan classes has proven quite stable. Of course it is true that at national level Janata Dal has as yet not been able to consolidate the OBC vote. There are various factors for that.

First there is no single backward caste which has an all-India presence. Like the professional diversities in their fields, backwards have different hues in different regions. Sharply different demographic patterns—like the Marathas in Maharashtra and the Jats in Uttar Pradesh — along with the varying levels of "caste consciousness" block the growth of a Pan-India OBC Movement.

Second, there is the factor of division between OBCs and Jats and Rajputs on the one hand and within OBCs between Yadavas, Ahirs and Kurmis on the one side and poorer castes among OBCs on the other. It is well known that Yadav-Ahirs and Kurmis are economically the most powerful among the OBCs. Whatever differentiation emerged among the OBCs it was largely because 10 per cent or so of the Yadava and Kurmis have been upwardly mobile and have succeeded in making it to the class of rich peasants. However there are not many landlords among them also—certainly statistically negligible. In this sense, even

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the most prosperous of the OBCs are quite unlike Jats.¹⁵

Inspite of all this the Janata Dal is the first centrist party to commit itself to the backward castes and classes entry into the power structure and to make equity and social justice its main political planks. Since caste and class mean in India almost the same thing, the Janata Dal might have broken the resistance of the power structure to significant social change. It is because of this that in the post-election meetings of the national executive of the party it decided not to depart from its basic political ideology but to make additional efforts to win the confidence of the middle and lower middle class.¹⁶

Caste and Politics : The Trends

From the above discussion it becomes clear that caste is an important factor in Indian Politics. Within the new context of political democracy caste remains a central element of Indian society while adopting itself to the values and methods of democratic politics. Thus, while the form of our politics is secular, the style is essentially casteist. In a wide range of social and economic activity in admission to the schools and colleges, in student politics, in employment opportunities, in private houses as also in certain categories of employees in the services, in the recruitment pattern of autonomous institutions, in the distribution of benefits based on discretionary power in the three tier Panchayati Raj and over bureaucratic decisions caste considerations play more than a marginal part.

Rasheeduddin Khan points out that some who hold that caste system is growing more powerful advance the thesis that modern means of communications the spread of education, increased

prosperity, expanding political opportunities and above all the formation of caste associations, have strengthened the bonds of caste with greater vigour. They argue that with the adoption of universal franchise, tremendous possibility as opened to the majority of middle castes who were hitherto denied their legitimate share of power. There were the caste groups which had captured the Congress during the liberation struggle agency has aligned itself with the modern integrative agency — Political Parties and by this fusion gained new strength. The emerging power-structure of the Panchayati-raj reveals the entrenchment of the rural caste elite in the vital sector of the political process. Through the working of welfare politics concerned as it is with

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the distribution of benefits, they have dislodged the urban elite, by casting wide their net of patronage and power.¹⁷

There is also a point of view that it is not caste alone which influences the politics. Politics also transforms the caste and affects its solidarity and hierarchy. A caste conscious of its social stratification strives to better its position for the sake of modernising the life of its members and thereby saving itself from the onslaught of social injustice. Believing that, it is quite eligible for participation in a representative democracy like other advanced castes, it asks even for representation in the government through membership of a political party irrespective of its position in the traditional stratification. The association of politics with caste has led to an injection of greater rationality into the caste system. According to Rajni Kothari, the process of politics is one of identifying and manipulating existing structure in order to mobilize support and consolidate positions. When the caste structure provides one of the most important organisation clusters in which the population is found to live, politics must strive to organise through such a structure. The alleged casteism in politics is thus no less than politicisation of caste.¹⁸

In this sense politicisation of caste is creating a new cohesion which is making caste perform roles which are new and secular, based not on an ascription but community of out look and aggregation of interest. The apparent resurgence of the caste therefore, it is argued, is a false manifestation. One need not confuse the form with the content.¹⁹ If it is so, it is possible that over the next few years the caste consciousness will further rise and political process will be called upon to take note of the aspirations of newly mobilised caste groups and issues of social justice on the one hand and maintenance of balance and formation of coalitions of different interests on the other.