CHAPTER IV

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The Government of India Act,1935 partially came into operation from April 1937. As opposition to the Federal Scheme came from all quarters, although for different reasons, the introduction of the Federal Scheme, as contemplated by the Act, was postponed. On February 20th,1947, the then British Prime Minister made a historic announcement that in any case, the British Government would transfer power to the Indian hands not later than June 1948[1].

The distribution of powers between the Centre and the Provinces remained, however, as before,excepting some minor additions and alterations required to suit the changed circumstances. As for instance, some changes were required as the discretionary powers of the Governor General and the Governors were abolished. Besides these among the other changes may be mentioned the addition of sub-section (5) to Section 102 in the adopted Government of India Act,1935, which empowered the Governor General to issue a proclamation of Emergency even before the actual occurance of war or internal

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1. Gwyer and Appadorai, Speeches & Documents on Indian Constitution Vol.II, Oxford University,1967,p.669.

disburance threatening the security of India, if the Governor General was satisfied that such a danger was imminent. Mention may also be made of Section 126 (a) of the said Act which authorised the enhancement of the control of the executive of the Dominion over the provinces. In the domain of finance also there were some changes. Even the provision governing the corporation tax in the Federated States was omitted. Again Section 142 (a) was a new insertion which authorised the levying of taxes on professions, trades, callings and employments by a province or any municipality or any local authority in a province. But there were no major changes in the scheme of distribution of powers under the Government of India Act, 1935 and this scheme remained in force until the provisions of the new constitution for the Republic of India came into operation in the month of January, 1950.

The Unity of the Federation:

The scheme of an All India Federation comprising the provinces of British India and the Princely States under the Government of India Act, 1935, did not materialise because of the continuing clash of different interests. With the partition of India, the Constitution makers of the country became definate that the further form of Government for India should be Federal. In this connection Resolution of the Constituent Assembly of India werein it was said:

" The said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom"[2]. In the words of Pandit Nehru, " Something more than a resolution. It is a declaration, a firm resolve, a pledge, an undertaking and for all of us declaration"[3].

A Draft Instrument of Accession was prepared and most of the States acceded to India, although the 'Process of getting instruments of Accession signed involved considerable persuasion, strain and anxiety[4]. This one of the formidable problems - the problem of fitting so many independent States geographycally linked up with British India into one constitutional frame work with India, was solved.

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2. Constituent Assembly Debates, 13th December, 1946, Vol.I, p.57.
3. Constituent Assembly Debates, Vol.VII, p.33.
4. Menon V.P., The Story of the Integration of the Indian States, p.114.

As a result of integration, when the constitution of India came into force its component parts were classified into four categories.

In the first category were included the former Governor's provinces with their size increased by the merger of small states. These were called Part A States.

In the next category i.e. B, were placed five unions of States and the three large States which survived integration, that is, Hyderabad, Jammu and Kashmir and Mysore.

Part C states were composed of some of the former Chief Commissioners Provinces and serveral Indian States.

The last category comprised Andaman and Nicobar Islands which were to be directly administered by the Centre. But among the three categories there were differences in status and organisation and this disparity in the Status of the Constituent Units made the Indian Constitution peculiar[5]. There was hardly any fundamental difference between the first two categories of States, that is, States specified in Part A and B of the first schedule to the Constitution. As Mr.Menon has truly remarked " A great achievement of the new

5. Report of the States Reorganisation Commission, Para 33.

constitution is the assimilation of the position of the former Indian States and Unions with that of the former Indian States and Unions with that of the former Governor's Provinces"[6]. Apart from the institution of Rajpramukh, observed the States Reorganisation Commission, " the main feature that distinguishes Part B states from Part A states is the Central Executive Supervisory Authority over the Government of these States for a specified period"[7]. It was provided in Art 371 of the Indian Constitution that Part B states were to remain under the general control of the centre and were to comply with the direction from the President of India for a period of 10 years. Sardar Patel, at the time of inclusion of this Article, provided this assurance to the States in the Constituent Assembly:

" The provision involves, no censure of any Government. It merely provides for contingencies which, in view of the present conditions, are more likely to arise in Part III[8] states than in the states of together categories. This Article is essentially in the nature of a safety-valve to obviate recourse to drastic remedies such a provision for the breakdown

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6. Menon V.P., op.cit.,p.470.
7. Report of the States Reorganization Commission,para 33.
8. Originally, the plan of the Draft Constitution of India was to divide the units of the Indian Federation into four parts and to place the Indian States in the third part.

of the constitutional machinery. It is quite obvious that in this matter the States, that is Mysore and Travancore and Cochin Union were democratic institutions have been functioning for a long time and where Governments are responsible to legislatures in office, have to be treated differently from the States not confirming to these standards. In all these cases our control will be exercised in varying degrees according to the requirements of each case"[9].

This statement was justified, as the application of this Article was withdrawn in the case of Mysore in 1952 and became a dead letter regarding other States also[10].

But Part C States were administered on a different basis. These States were to be administered by the President either through a Chief Commissioner or a Lieutenant Governor or through the Government of a neighbouring State. Under the Part C States Act of 1951, some of these States were allowed to have legislative assemblies and responsible ministeries. But that did not detract from the Legislative authority of the Union Parliament over these States or from the responsibility of the Union Government to Parliament for their administration[11].

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9. Constituent Assembly Debates, Vol.X, 12th October,1949, pp.164-65.
10. Menon V.P., op.cit.p.471.
11. Report of the States Reorganisation Commission, para 13.

Articles 3 and 4 of the Indian Constitution on the other hand, vest extraordinary powers in the hands of Parliament in the matter of changes and adjustments in the area of the States.

The problem of reorganisation of the States came to the forefront after the creation of Andhra State. The Government of India appointed on the 29th of December,1953, the States reorganisation commission to examine the question of reorganisation of the States of the Indian Union[12]. The Commission after a full consideration of the problem came to the conclusion that it was not possible or desirable to reorganise States on the basis of the single test of either language or culture, but a balanced approach to the whole problem is necessary in the interest of national unity[13]. All these things, such as preservation and strengthening of the unity and security of India, linguistic and cultural homogeneity, financial, economic and administrative considerations and successful working of the five year plans were regarded as worth considering[14]. Moreover, the disparity between the States was to be abolished and all the States should possess equal status and a uniform

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12. Report of the States Reorganisation Commission, Appendix-A, p.265.
13. Report of the States Reorganisation Commission,para 162.
14. Ibid.,para 93.

relationship with the Centre. Part C States, as they did not provide any adequate recompense for all the financial, administrative and constitutional difficulties which they created, were to be merged with the adjoining States and where such merger was possible where to be administered by the Centre[15].

The States Reorganisation Commission recommended the maintenance of two types of units in the Indian Union: (a) States, having a constitutional relationship with the Centre on a federal basis and (b) centrally administered areas, which for strategic or other considerations could not be joined to any of the States[16].

The proposals of the States Reorganisation Commission have been incorporated in the States Reorganisation Act,1956 according to which the units of the Union were classified into three parts of A States, one Part B state categoric (Jammu and Kashmir) and five Part C States categories[17]. But this classification was meaningless, as the Constitutional seventh Amendment Act 1956 in which changes in the constitutional system connected with the reorganisation of States

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15. Ibid.,Para 268.
16. Ibid.,Para 285.
17. States Reorganisation Act,1956, Section 12.

were embodied, distinguished two types of units only, that is the States and the Union Territories. At present there are 22 States and 9 Union Territories[18]. Art.371 of the constitution has been replaced by a new one which has made some special provisions with respect to the States of Andhra Pradesh, Punjab and Maharashtra and Gujarat (that is former State of Bombay). The President may by order, provide for the constitution and function of regional committees of Legislative Assemblies of the States of Andhra and Punjab and provide for any special responsibility of the Governor in order to secure the proper functioning of the regional committees. In the case of Maharashtra and Gujarat, the President may provide for any special responsibility of the Governor for the establishment of separate development boards for Vidarbh, Marathwada, the rest of Maharashtra or as the case may be Saurashtra, Kutch and the rest of Gujarat. With the provision that a report on the working of each of these boards is to be

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18. The States are - Andhra Pradesh, Assam, Bihar, Gujarat, Harayana, Himachal Pradesh, Jammu and Kashmir, Karnatak Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Orissa, Punjab, Rajastan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal. The Union Territories are - Andaman and Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadar and Nagar Haveli, Delhi, Goa, Daman and Diu, Lakshadeep, Mizoram and Pondichary.

placed before the State Legislative Assembly each year. The President may extend the responsibility of the Governor further to the equitable allocation of funds for developmental expenditure over the said areas. If special responsibility of the Governor means that the Governor is entitled to act in his discretion in the above cases, he will no doubt be subjected to supervision then by the Central Government[19].

The Union Territories are governed accordingly to the provisions of Part VIII of the constitution. Except as otherwise provided by Parliament, the Union Territories are to be governed by the President, acting through an administrator appointed by him.

Distribution of Legislative Powers under the Indian Constitution:

The scheme of distribution of legislative powers between the Union and the States under the new constitution is fundamentally the same as under the Government of India Act,1935. Where there is any diviation from the scheme of distribution under the Act of 1935, it is invariably in the direction of strengthening the Government of the Union.[20] In the constitutional

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19. Alexandrowic C.H., Constitutional Develop ments in India, pp.189-90.
20. Gadgil D.R. Some Observations on the Draft Constitution, p.70.

history of India the Government of India Act,1935, for the first time, provided a rigid distinction of powers of legislation.[21]

Subjects of legislation have been enumerated in the seventh schedule of our constitution and have been classified into three lists, viz. the Union list the State List, and the concurrent list. The Union List comprises 97 items as against 59 entries under the Act of 1935. In this regard Dr.Ambedkar observed, the constitution introduced the greatest possible elasticity in its federalism.[22]

The State List contains 66 entries, while the Act of 1935 contained 54 entries in the provincial list. These entries consist of subjects which are chiefly of local interest.

So far concurrent list is concerned as incompatible with a good federal government by such an eminent authority as Prof.Wheare. The Constitution, however, followed the Act of 1935 in this matter also added a concurrent list which is even wider in scope than that to be found under the Act of 1935.

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21. Keith A.B., A Constitutional History of India,p.263.
22. Constituent Assembly Debates, Vol.VII, p.35.

In this provision K.Santhanam in constituent Assembly observed: " It tends to blur the distinction between the Centre and the Provinces. In the course of time it is an invitable political tendency of all Federal Constitutions that the Federal List grows and the concurrent list fades out, because when once the Central Legislature takes jurisdiction over a particular field of legislation, the juridiction of the provincial legislature goes out"[23]. On the other hand Shri Alladi Krishnaswami Ayyar rightly answered that the existence of a concurrent list in no way detracted from the federal character of the constitution as there was an independent list of subjects for the units.[24] The concurrent list under the constitution included 47 items. These are matters in which though State Legislation is sometimes necessary in order to secure uniformity throughout the country or to provide guidance to the units or to provide remides for mischief arising in one particular unit but extending beyond its boundries.[25]

Article 246 (1) gives exclusive powers of legislation to the Union Parliament regarding matters included in the Union List nothwithstanding anything in the Constitution.

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23. Constitutient Assembly Debates, Vol.VII, p.263, 6th November,1948.
24. Ibid.,p.336.
25. Report of the Joint Parliamentary Committee, 1934, Vol.I, Part I, para 31.

But the State Legislature have exclusive powers of legislation in the State List, subject to the clauses (1) and (II) of Art.246. In the concurrent fields also the powers of the State Legislatures are to be exercised subject to clause (I) of the above mentioned Article, that is subject to the powers of legislation of Union Parliament. Thus the wordings of Art. 246 clearly secure the predominance or supremacy of the Union legislature in case of overlapping as between list I, II and III.[26]

But although Union supremacy is to be maintained in the case of overlapping of powers mentioned in the different lists; legislative powers given to the units in clear and unambiguous terms should not be denied to them on extraneous considerations.[27]

According to Art.254 of the constitution, if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list, then subject to the provisions of clause (2) the laws

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26. Basu D.D., Commentary on the Constitution of India, Vol.II, (3rd Edition), p.272.
27. Sheffi (Miss) Kishori, The Ring, All India Reporter, 1950, Federal Court 69 (71).

made by Parliament whether before or after the State law or the existing law as the case may be, will prevail and the State law will become void to the extent of repugnancy. This Article is some what ambiguous so some thinkers to express doubts over this Article regarding its scope of applicability. Sir Ivor Jennings, while assessing Indian Federalism, remarks " Some authorities consider that this Article applies only to subjects in the concurrent list, but it is not so phrased"[28].

But the question of inconsistency between State Legislation and Union Legislation is likely to arise in the concurrent field only. Because Art.246 of the constitution already secures Union Supremacy in case of any overlapping of powers between the three legislative lists. Art.254 (1) is a virtual reproduction of Section 107 (1) of the Government of India Act,1935. In the case Venkataram Aiyyar J.observed that in order to apply Section 107 of the Act of 1935 two considerations must be fulfilled:

1) The provisions of the provincial law and those of the Central legislation must both be in respect a matter which is enumerated in the concurrent list and (2) they must be repugnant to each other"[29].

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28. Sir Ivor Jennings, Some Characteristics of the Indian, Constitution, p.61.
29. Krishna V. A.S., State of Madras, A.I.R.,1957, Section C, 297,(300), p.110.

Clause (2) of Article 254, however, mentions an exception. If the law made by the State Legislature has been reserved for the consideration of the President and has received his assent then it would become valid. Our provision to the said clause empowers Parliament to enact, at any time, a law repeling or amending such a State Law. This is a new insertion as there was no corresponding provision in the Government of India Act,1935. Now by this provision the constitution has enlarged the powers of Parliament as the Parliament can do what the Central Legislature could not do under Section 107 (2) of the Government of India Act,1935.[30]

The most important departure from the Act of 1935 is to be found in the case of allocation of residuary powers. These powers are vested exclusively in Parliament by Art. 248 and Entry 97 of List I Schedule VII of the constitution. Some members of the Constituent Assembly wanted to vest the residuary powers in the units. Finally, it way settled, that these powers should be vested in the Centre. Shri T.T. Krishnamachari in the course of debates in the constituent Assembly observed, "-

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30. Zaverbhai V., State of Bombay, All India Reported, 1954, Supreme Court, 752 (757).

" I think more than one honourable member mentioned that the fact that the residury power is vested in the Centre in our constitution makes if a unitary constitution... I would like to tell honourable members that it is not a very important matter in assessing whether a particular constitution is based on a federal system from the point of view whether the residury power is vested in the States or in the Central Government"[31].

The Indian Constitution is more elaborate on this point than the Act of 1935. Shri T.T.Krishnamachari was accurate in his statement when he observed: " We have delt very carefully with the possibility of a vacuum in Governmental power"[32].

Articles 249 to 253 creates opportunities for Parliament to make laws on matters in the State list in certain circumstance. These articles provide constitution to strengthen the Central Government as far as possible.

Article 249 Clause 1, authorises the Union Parliament to legislate on subjects included in the State List whenever "the Council of States declares by a resolution supported by not less than two thirds of members present and voting.

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31. Constituent Assembly Debates, Vol.XI, p.952, 25th November,1949.
32. Constituent Assembly Debates,Vol.XI, 25th November,1949, p.953.

Such legislation to be necessary and expedient in national interest[33] will remain in force for such period (not exceeding one year) as may be specified therein. This period of one year may be extended to another year by a further resolution of the Council of States. A law passed by Parliament under this provision will cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force.

The above mentioned constitutional provision includes for the first time "a useful innovation designed to secure greater flexibility in working of the federation".[34] But according to Art.249 of the Constitution of India the Council of States and not the Judiciary of India is competent to decide whether legislation on a particular subject included in the State List is "necessary or expedient in national interest". Besides, the expression ' national interest ' has a very wide connotation, and it includes each and every sort of circumstances justifying legislation by the Parliament on State matters.

The reason furnished in the constituent Assembly for including such a provision was this : "when our national

33. Art.249 of the Constitution.
34. Seervai H.M., Law Quarterly Review, Vol.78, 1962.

economy is in the incipient stage of development, we cannot make a water-tight or rigid distinction between central and provincial subjects"[35]. From the working of other federal system it has been clear that owing to the necessity of planned development of economic life, matters included in the State List may assume national importance. But the Central Legislature cannot legislate on such matters, except after amending the constitution. But here, when 'the people at the Centre realise that it is no longer feasible and proper to keep a subject under the provincial list they can make if a central subject without understanding the cumbersome procedure of a constitutional amendment'[36]. However, the realieving feature is this that the laws passed by Parliament in such cases are of a temporary nature. In the words of Shri T.T.Krishnamachari, "the mischief, if at all there is any, is restricted to a very limited period, and the very fact that it is limited to a very short period itself offers no temptation for the Centre using it as a means of augmenting its own power; and if it is used at all, it will be used for a valid and definately useful purpose to which by and large the component states are not likely to object"[37].

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35. Constituent Assembly Debates, Vol.VIII, 13th June,1949, p.805.
36. Constituent Assembly Debates, Vol.VIII, 13th June,1949, p.806.
37. Ibid.,p.805.

Article 250, clause 1 provides " the union Parliament to legislate for the whole or any part of India on any subject contained in the State List when a proclamation of emergency is in operation. Clause 2 of the said article lays down that Parliamentary Legislation of this sort ceases to operate" on the expiration of a period of six months after the proclamation has ceased to operate"[38].

Article 251 explains the scope of Article 249 and 250. Although the Union Parliament is empowered to legislate on a matter enumerated in the State List. But in case of conflict between any provision of a State law and any provision of a Union Law which the Parliament has made under either of the Articles 249 and 250, the latter shall prevail over the former, and the State law will be void to the extent of the repugnancy. Thus the Union Parliament enjoys under Articles 249 and 250 only a concurrent legislative power in respect of the subjects included in the State List.

Article 252, which further makes the federal system of India flexible, provides for Union State cooperation in the legislative field. As M.Venkatrangaiya observes " Federalism... may be of neither comperative or a cooperative character and the federalism as contemplated by the new Indian Constitution in essentially cooperative"[39].

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38. Art.250 of the Constitution of India.
39. Indian Journal of Political Science,Vol.XI,1950.

Article 253 stated " Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body"[40]. Under the Indian Constitution no consent of the States is necessary for making laws in order to implement obligations arising out of a treaty in matter under the exclusive jurisdiction of State of the States. Under the Government of India Act,1935, the Federal Legislature could make laws for any province or a Federal State as the case might be, only with the respective, concent of the Governor concerned or the Ruler. "This provision has the obvious merit of avoiding the immense difficulties which the treaty implementation has encountered in all federations"[41]. The scope for making laws under this Article under the constitution is even wider than that under the Act of 1935, at it relates not only to the implementation of treaties and agreements but also conventions made or decisions taken at any international conference. "It does not specifically refer to conferences, associations and

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40. Art.253 of the Constitution of India.
41. Bowie and Friedrich, Op.cit.pp.252-53.

other bodies representing Governments, and on its face it would seem to apply to any international organisation..."[42]. Even the same view a was expressed by Sardar K.M.Panikkar in the constituent Assembly " According to him this provision is 'dangerous' because what is meant by international association is not mentioned in the constitution and, as it is not limited to Federal or Concurrent list it may 'nullify' State Constitution"[43].

While concluding the legislation between the Union and the States as provided by the constitution of India. Some critics allege that " the legislative relations show an unmistakable sign of over centralization"[44]. But in providing for a strong centre, the Indian constitution has simply followed the world experience"[45]. In all existing federations there has been a marked centralization of powers and 'virtually all the great driving forces in modern society combine in a centralist direction"[46]. This centralisation follows naturally from the need for adjusting governmental machinery to the shifting exigencies of a dynamic society. Centralization, according to Sait, " is generally a response to social pressure

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42. Ivor Jennings, Op.cit.,pp.65-66.
43. Constituent Assembly Debates, Vol.V, p.156, 25th Aug.,1947.
44. Ivor Jennings, Some Characteristics of the Indian Constitution,p.66.
45. Munshi K.M., Article on 'Distribution of Powers',Indian Law Review, Vol.IV, p.15, 1950.
46. Lipson, The Great Issues of Politics, p.315.

or foreign pressure"[47]. As Ramaswami Iyer summed it up "what nothwithstanding the fiercly avowed intentions and policies of the founders of the American Constitution, has taken place in the United States and what local and provincial partiotisms have been unable to do in Canada and Australia, have now been statutorily formulated in India. The necessities of the new economic and political pressures whose operation in a shrinking and interdependent world tends towards the concentration of power and control in a Central Organisation"[48].

Administrative Relations Between The Union and The States:

The Government of India, Act 1935 made a division of legislative and executive powers between the Central and Provincial Governments with meticulous care, but separation between their administrative system was not effected completely. Even after the adoption of the new constitution the structure of administration has been left almost undisturbed.

Article 73 of the constitution extends the administrative power of the Union of India extends to those matters on which it has competence to make laws. Similarly, the administrative authority of the State is co-existing with its legislative

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47. Indian Journal of Political Science, Political Institutions A Preface,1950, p.404.
48. Indian Journal of Political Science,Vol.XI, Also see Constituent Assembly Debates, Vol.VII, p.42.

jurisdiction. But the executive power of the State with regard to the concurrent field of legislation is limited by "the executive power expressly conferred by the constitution or by any law made by Parliament upon the Union or authorities thereof"[49]. Ordinarily the executive power in respect of concurrent list is vested in the States. But the above provision of the constitution enables the Union Parliament to bestow such power upon the union or to authorise the Union to issue necessary directives to the State authorities[50]. B.R.Ambedkar[51] justified this provision on two grounds. First, it has a strong precedent in Australia where the Centre is competent to assume power to administer a law in respect of concurrent field. Secondly, some matters included in the concurrent list are so wide in scope that the centre should have power to step in, if Parliament made laws in relation to them are lightly or badly administered by the State authorities.[51]

Although the constitution of Indian provides a clear-cut distinction of legislative competence between the Union and States, the Union does not posses any exclusive machinery for administering its laws, and the States may be used as the

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49. Art.162 of the Constitution of India.
50. Draft Constitution of India, VI, p.122.
51. Constituent Assembly Debates, Vol.VII, pp.1138-1140.

administrative agents of the centre. The constitution devolves upon the States the obligation to use their executive power in such a way as to ensure compliance with Union laws[52]. Hence, it is the constitutional responsibility of a State to enforce the Union laws which are applicable in the State[53]. The Union is further authorised to issue directives to the States as may be necessary for the above purpose[54]. Art.257 (1) states: " the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union", and the Union is empowered to issue the directives to the States necessary to ensure that end.

In such a federal country as the U.S.A., the idea of Federal Government giving directions to the States is 'foreign and repugnant'[55] to the Constitution. In including such a provision our constitution makers have followed the Government of India Act,1935. But for making the power of giving directions an effective weapon of 'control of the Union over States', the constitution goes even beyond the Act of 1935. Under the constitution a direct sanction has been attached for non-compliance with the directions issued by the Centre. In case

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52. Art.256 of the Constitution of India.
53. Basu D.D., Commentary on the Constitution, India, Vol.II, p.301.
54. Refer the Act of 1956.
55. Basu D.D., Commentries on the Constitution of India, Vol.II (3rd Edition), p.300.

of failure to give effect to directions issued by the Union the President will be competent to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the constitution. Such a situation entitles the President to supersede the State Government and exercise his powers under Art.356.

There is also provision for the delegation of functions to a state government. With the consent of the State Government concerned; the President can delegate functions to a State Government in relation to any matter to which the executive power of the Union extends[56].

Under Art.261 which is a new insertion regarding inter-state community. Under the said provision " full faith and credit must be given throughout India to public acts,records, judicial proceedings of the Union and of every State". This provision in constitution is necessary because India is now a union of States and its members are distinct political entities. As Vareed V.Gopalbai observed, " In a federation for all national purposes embraced by the federal constitution, the State is of course one united under the same authority and Government by the same laws. But in other respects the

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56. Art.358 (1) of the Constitution of India.

States are necessarily foreign to and independent of each other and a foreign judgement for purposes of private international law need not necessarily be of a state owing different allegiance"[57].

Under Art.262 Parliament has passed two laws: (a) The Inter-state water disputes Act 1956, and (b) The River Boards Act 1956.

Article 263, which is a virtual reproduction of Section 135, Government of India Act,1935, contains another provision to iron out differences to remove tensions and to secure harmony between the Union Government and the States and between the States themselves whenever occasion arises.[58]

The President is empowered to appoint an Inter-state Council, if he thinks necessary to do so in public interest. In the same sense another provision[59] has been made in the State Reorganisation Act,1956. This is for the formation of zones and Zonal Councils. The Act provides for the five zones. In India, these are permanent features, but these features as to the impact of Zonal Council on Local or State autonomy are

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57. Vareed V.Gopalbai, A.I.R., p.358 (360).
58. Joshi G.N., The New Constitution of India, p.283.
59. Part III, Clauses 15-22 of the States Reorganisation Act,1956.

groundless, as it is obvious that their functions are purely advisory aiming at securing better cooperation within the different zones"[60] On the other hand these have been required as 'merely dignified debating societies' with no effective constitutional or legislative powers.

With a concluding remarks, the administrative relation between the Union and the States shows that the constitution of India has assigned very wide sweep of administrative power to the Union. Article 256 and 257 lay down a system of comprehensive administrative control and direction of the States. This aspect of administrative has come for scathing criticism[61].

As Ambedkar mentioned in the Constitutient Assembly that the constitution, while securing the advantages of a federal system had sought to provide means for procuring uniformity in all basic matters which were regarded as essential in securing the unity of the country. These means were a single judiciary, a common All India Civil Service and uniform civil and criminal laws[62]. As Dr.A.K.Ghosalapthy expresses, "the power of issuing directives to states by the Union is bad

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60. Alexandrowic C.H., op.cit.p.179.
61. Keith A.B., A Constitutional History of India, p.384.
62. Constituent Assembly Debates, Vol.VII, pp.36-37.

enough, being obnoxius to the spirit of federalism but enforcing them by a threat to clamp on them the emergency provisions of Article 456 is worse still and calculated almost to sound the death-knell of federalism[63]. In India the religious and linguistic differences constitute powerful centrifugal forces which some times thereaten the very foundation of the Union. The control and the direction of the States involving grant of wide sweep of power to the centre are necessary for adequately restraining the distintegrating forces which may at any time spark off a major fire in any part of the Country[64].

Thus there is enough scope for securing uniformity and coordination and an effective administrative news has also been established between the Union and the States[65]. With suming up of Ambedkar's observation, he said : " It is quite clear in the judgement of the Drafting Committee that this is not only necessary but consequential, for the simple reason that, once there is power given to the Union Government to issue directives to the States that in certain matters they must act in a certain way, it seems to one that not to give

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63. Indian Journal of Political Science,.Vol.XIV,1953, Also see Constituent Assembly Debates, Vol.II,pp.510-511.
64. Sharma B.N, Relations between the Centre & the Units in Indian Union', in Indian Journal of Political Science, Vol.XI, No.3, 1950, p.120.
65. Joshi G.N., op.cit.p.286.

the centre the power to take action when there is failure to carry out those directions is practically negativing the directions which the constitution proposes to give to the Centre. Every right must be followed by a remedy. If there is no remedy then obviously the right is purely a paper right, a negatory right which has no meaning, no sense and no substance"[66].

Financial Relations between the Union and States:

The Government of India Act,1935, tried to avoid the pitfalls of other federal financial systems. It had sharply demarcated the tax juridiction of different layers of government so that conflicting tax juridictions might not arise. The scheme of division of the sources of revenue and powers of taxation embodies in the constitution of India is substantially the same as in the Act of 1935[67], though there have been made some changes.

In the constituent Assembly, however, there was apparently little importance attached to the adage that ' he who pays piper calls the tune', and when provincial representatives

66. Constituent Assembly Debates, Vol.II, pp.507.
67. Report of the Finance Commission, 1952, p.23.

called for increased provincial revenues they did so out of pride and the desire that their province might meet its social responsibilities rather than from any dream of 'provincial autonomy'[68].

Alladi Krishnaswami Ayyar, for example, told the Assembly that although 'an idependent source or sources of revenue are certainly necessary for the proper functioning of a federal government, there is a distinct tendency in the several federations for the central government to act as the x taxing agency; taking care at the same time that the units shared in the proceeds of the taxes and received other subsides[69].

Broadly, in the constitution of India the taxes which have a locally ded to the states, where as taxes with broader inter-state base rest with the Union. The residury taxing authority is assigned to the Union[70].

Taxes on income other than agricultural income, corporation tax, customs and excise are some of the characterstic taxes falling within the taxing juridiction of the Union, while taxes on agricultural income and sales tax are certain important

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68. Constituent Assembly Debates, Vol VII No.4, p.336-7.
69. Constituent Assembly Debates, Vol.XI, 7, pp.732-6.
70. Entry 97 of List I, Seventh Schedule of Indian Constitution.

sources of revenue for the states. The following table would show the distribution of taxing competence between the Union and the States.

TABLE'

Union	States
Tax on income other than agricultural income.	Land Revenue.
Customs Duties.	Taxes on agricultural income.
Duties of Excise except on alchoholic liquors and narcotics corporation tax.	Duties in respect of succession to agricultural land.
Taxes on capital value of the assets of individuals and companies (exclusive of agricultural land).	Estate duty in respect of agricultural land.
Estate and succession duties on non-agricultural property.	Taxes on mineral rights subject to any limitations imposed by Parliament.
Terminal taxes on goods or passangers, taxes on railway fares and freights.	Duties of excise on alchohol opium etc.
Taxes on transactions in stock exchanges and future markets.	Taxes on the entry of goods into local area x for consumption or sale.
Rates of stamp duty on bills of exchange etc.	Taxes on consumption or sale of electricity.
Taxes on sale or purchase of advertisements in new papers.	Taxes on the sale or purchase of goods other than newspapers.
Taxes on Inter-state sales.	Taxes on advertisements other than advertisements in newspapers.
Any tax not mentioned in either of lists I & II.	Taxes on goods and passengers carried by road or on inland waterways.
	Taxes on vehicles.
	Taxes on animals and boats.
	Tolls.
	Capitation taxes.
	Taxes on Professions etc.
	Taxes on luxries.

71. Amal Ray 'Inter-Governmental Relations in India', Study of Indian Federalism, p.70.

Union taxes can be classified under the constitution into several clusters (i) some taxes such as stamp duties are imposed by the Union but are collected and taken by States[72]. Taxes, for example, succession and estate duties (except on agricultural land), taxes on railway fares and freights etc. are imposed and collected by the Union, but the entire proceeds are distributed among the States[73]. There are some taxes such as taxes on non-agricultural income which are levied and collected by the Union, but the proceeds thereof are shared between the Union and the States[74], and (iv) certain taxes such as cooperation tax, customs duties are levied, collected and appropriated by the Union. Besides, the Union Parliament is authorised by the constitution to increase any of the duties or taxes mentioned in Articles 269 and 270 by a surcharge for exclusive union purposes[75].

The constitution of India with a view to achieve the purpose provided for the system of grant-in-aid. In this connection Articles 275 and 282 are relevent. The Finance Commission is an impartial, expert body deriving its authority from the constitution, and as such its recommendations carry

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72. Article 268 (1).
73. Article 269 (1).
74. Article 270 (1) & 272.
75. Article 271.

a special sanctity. Article 280 requires the President to set up at the expiration of every fifth year a Finance Commission whose duty shall be to make recommendation to the President as to (i) the distribution between the Union and the States of the net proceeds of taxes which are to be or may be divided between them... and the allocation between the States of the receptive shares of such proceeds" and (ii) " the principles which should govern the grant-in-aid under Article 275[76], some important members of the Constituent Assembly, in their zeal to make the centre as independent as possible in finance, wanted to circumscribe the power of the commission to the initial fixation of the shares of the centre and the states[77]. As Ambedkar argued:' " the Finance Commission will be acting as a bumper between the President and the provinces which may be clamouring for more revenue from income tax"[78].

The First Finance Commission in the report submitted in 1952 after considering all the circumstances recommended 55 per cent of the net revenue from income tax, as the share of the order suggested by the majority of the States[79]. The additional transfers of revenues from the Centre to the Units

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76. Article 280.
77. Kunzru H.N.'s views, Constituent Assembly Debates, Vol.IX, p.304.
78. Krishnamachari T.T.'s views, Constituent Assembly Debates,Vol.IX,pp.325-26.
79. Report of the Finance Commission,p.71,1952.

must be such as not to impose any undue strain on the centre, taking into account its responsibility in such vital matters as the defence of the country and the stability of the economy. The Commission held that the principles of the distribution of revenues and the determination of grant-in-aid must be uniformly applied to all the States and the scheme of distribution should attempt to lessen the inequalities among the States[80]. So the First Finance Commission proceeded cautiously and although it used both the methods of devolution of revenue and grant-in-aid if placed substantial reliance upon transfer of revenues.

The scope of task of second Finance Commission was some what wider because the problem of the sharing of newly imposed taxes came within its purview and also because it had to consider the requirements of second five year plan. As regards planning, the scope of consideration on the part of Finance Commission is, however narrow, there is, as rightly pointed out by the Commission, also the necessity of coordination between the Planning Commission and the Finance Commission as there is, in some cases, the possibilities of overlaping.[81] However, although in the approach of the Second Finance Commission

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80. Report of the Finance Commission, 1952, p.8.
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to the problem of devolution of resources upon the States, there is no basic difference from that of the First Finance Commission.

The Third Finance Commission also on the whole should much anxiety to grant as much of financial autonomy to the states as was possible. Specially the widening of the range of excise duties to be shared between the Centre and the States imparted a degree of elasticity to the revenues of the States. This Commission also emphasised the necessity of coordinating the work of the Planning Commission and of the Finance Commission. The Commission suggested two alternatives in this regard. Firstly the functions of the Finance Commission should be so enlarged as to embrace the total financial assistance necessary to meet both budgetary and planning requirements; or the Planning Commission should be transformed into a Finance Commission at an appropriate time[82].

In other federal countries such elaborate provisions for regulating financial relations are rare. Though the States possess minimum of Financial Authonomy[83] necessary in a federal set-up, the system is highly integrated[84]. Even in the case of some taxes which are meant for use by the States

82. Report of the Finance Commission, 1961, pp.35-36.
83. Alexandrowicz C.H., op.cit.p.203.
84. Mishra B.R., op.cit.p.88.

exclusively their share is determined by the Centre. The objectSof the constitution makers were to prevent a double levey on the citizens from two different sources[85]. It has been observed; " It is characteristc of the relatively unified constitution of the Indian Federation that Central Finances are in contact with State Finances in a variety of directions[86]. A common system of audit and accounts also helps integration of inter-governmental finances. The comparatively elastic and lucrative sources of revenue belong to the centre while the large number of social services which have been described as both expansive and expenlive have been entrusted to the States[87]. As Shri Ramaswami Mudaliar in the Constituent Assembly explained " much of this sphere of activity which makes for the happiness of the individual man lies with the province or the unit of administration and not with the central administration... It is because of the weight of that responsibility that the administrators of units feel that in the separation of powers and particularly in the sphere of taxation they have not got enough resources to satisfy those responsibilities"[88]. Thus the allocation of resources has not corresponded to the allocation of functions[89].

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85. Constituent Assembly Debates,Vol.V,p.74,1974.
86. Public Finance Surveys, India, U.N.Deptt.of Economic Affairs,1957, p.51.
87. Poduval R.N., Finances of the Govt.of India,p.242.
88. Constituent Assembly Debates,Vol.V,p.85,21st Aug.1947.
89. Poduval R.N.,op.cit.,p.243.

Moreover, there is difference in the fiscal strength of the States which compels the States to seek Federal aid or to allow their services to stagnate or decline. Here is the federal dilemma[90].

The financial position of the States vis-a-vis the Centre is relatively weak. There is no doubt about it. But there is wide scope for adjustment under the Constitution. "The basic idea of the scheme is that the State would require central assistance, mainly in the form of subventions and grants to balance their revenue budgets"[91]. "To this extent, " as Taxation Enquiry Commission has rightly remarked, " Central and State revenues really coalesce for purposes of the public finance of State Governments and the old antagonism between Central revenues and State revenues has, therefore, disappeared"[92]. The system of division of powers is based upon the principles of suitability and efficiency[93] and has shown possibly more practical rationalism[94] than is to be found in any other federal system. As regards the machinery for adjustment the role of the Finance Commission is perhaps unique[95], though it is true that the Commission

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90. Ibid.,p.267.
91. Santhanam K., The Third Finance Commission, Article in the Amrita Bazar Patrika, 6th January,1961,p.8.
92. Report of the Taxation Enquiry Commission,1953-54,Vol.I,p.33.
93. Misra B.R.,op.cit.p.118.
94. Ghose G.K.,The Indian Financial System,p.19.
95. Misra B.R.,op.cit.p.110.

has no opportunity of dealing comprehensively with the entire financial relations of the country and the emergence of the country and the Planning Commission has somewhat reduced its original importance.

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