CHAPTER II
LEGISLATIVE RELATIONS

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CHAPTER II
LEGISLATIVE RELATIONS

1. *INTRODUCTION*

2.1.01 The Union Powers Committee, in their report on July 5, 1947 to the President of the Constituent Assembly, declared that the “soundest frame-work for our Constitution is a Federation, with a strong Centre”.[1] At the same time, they ruled out the idea of framing a Constitution on the basis of a Unitary State as “it would be a retrograde step, both politically and administratively”.[1] We have discussed earlier in Chapter I on “Perspective", why the Constituent Assembly opted for a “strong Centre" and at the same time, decided to decentralise and distribute powers between the Union and the States on the federal principle. It is not necessary to recapitulate all that we have said there. Suffice it to say, that a strong Centre was considered necessary, not only to protect the independence and preserve the integrity and unity of the country but also to coordinate policy and action between the Union and the States on basic issues of national concern.

2.1.02 In devising the scheme of distribution of powers between the Union and the States, the Constituent Assembly did not adopt a doctrinaire approach based on the out-moded concept of classical federalism. They moulded the federal idea to suit the peculiar needs, traditions and aspirations of the Indian people. They had learnt from the experience of the working of the older federations as to what institutional improvements would be necessary to ensure the vitality of the system and its adaptability to the changing needs of a dynamic society. It did not escape their notice that even in the United States which was the home of 'classical' federation, the trend was towards centralisation and the functional reality did not square with the constitutional theory. Due to dynamic interplay of various factors, the American system was undergoing considerable changes and adjustments. Inter-governmental dependence was increasing. Emphasis was shifting from co-ordination to co-operation. New areas of national concern were emerging. National policies were extending into new fields which were the traditional preserve of the States and their local subdivisions.

2.1.03 The framers of the Indian Constitution were also alive to the fact that under the Canadian Constitution— which they studied as a model—the inter-governmental arrangements were evolving into a *de facto* system of coopera-tive endeavour of shared responsibilities, transcending the formally demarcated frontiers.

2.1.04 These functional realities, centralising trends and changing concept of federalism find reflection in the scheme of distribution of powers adopted in our Constitution. This scheme seeks to reconcile the imperatives for a strong Centre with the need for State autonomy. It distributes powers, yet does not effect a rigid compartmentalisation. Functionally, it is an inter-dependent arrangement. Its elastic frontiers stretch as far as inter-governmental cooperation and comity can take them in pursuit of their common goal—the Welfare of the People. It is flexible enough to keep pace with the movement of a complex, heterogeneous society through time.

2.1.05 These are the main considerations which weighed with the framers of the Constitution in assigning to the Union a pre-eminent role in all spheres of Union-State arrangements. They have not lost their relevance under the present-day world conditions. Any approach to an examination of the Union-State arrangements must, therefore, be informed by these primary considerations.

2. *DISTRIBUTION OF LEGISLATIVE POWERS*

2.2.01 The distribution of legislative powers between the Union and the States is the most important characteristic of a federal constitution. This distribution can be achieved by a single, two-fold or three-fold enumeration of Governmental powers. The Constitution of the United States of America specifically enumerates the powers of the Federation and leaves the unenumerated residue, except those prohibited by the Constitution, to the States. The Australian Constitution, while enumerating the powers of the Commonwealth, leaves the residue to the States. Though in it there is no separate list enumerating concurrent powers, by implication some of the enumerated powers of the Commonwealth are concurrent.

The Constitution of Cananda distributes the powers between the Dominion and the Provinces by making a three-fold enumeration. Section 91 of its Constitution Act enumerates Classes of Subjects which are within the exclusive competence of the Parliament of Canada. Section 92 contains a list of Classes of Subjects which are within the exclusive competence of the Provinces. Section 95 demarcates a narrow area for

concurrent legislative jurisdiction of the Union and the Provinces. Section 91 gives general “residuary" power to the Dominion Parliament to make laws for peace, order and good Government of Canada, in relation to all matters, not coming within the Classes of Subjects assigned to the Legislatures of the Provinces.

2.2.02 The Government of India Act, 1935, made a comprehensive enumeration of subjects of legislative powers and divided them into three Lists—Federal, Provincial and Concurrent. It conferred the residuary powers on the Governor-General who could, in the exercise of his discretion, place any subject not found in the three Lists, in any of these Lists.

3. *OUTLINE OF THE CONSTITUTIONAL SCHEME*

2.3.01 The Constitution of India also adopts a three-fold distribution of the subjects of legislative power by placing them in any one of the three Lists, namely, I (Union List), II (State List) and III (Concurrent List).

2.3.02 Chapter I in Part XI of the Constitution contains the provisions which govern Union-State relations in the legislative sphere. It comprises eleven Articles, 245 to 255. Out of these, the provisions in Articles 245, 246, 248 and 254 (read with the Seventh Schedule) constitute the core of the scheme of distribution of powers.

2.3.03 Clause (1) of Article 245 defines the extent of *territorial* jurisdiction of Parliament and State Legislatures. It confers power on Parliament to legislate for the whole or part of India and on State Legislatures to legislate for the whole or part of a State. The legislative power so conferred by Article 245 is distributed by Article 246 between the Union and the States with reference to the subjects enumerated in the three lists of Schedule VII. Clause (I) of Article 245 is expressly “subject to the provisions of this Constitution". It follows that the legislative powers derived both by Parliament and the State Legislatures from Article 246, are also subject to the limitations imposed by the other provisions of the Constitution.

2.3.04 Article 246 confers exclusive legislative power on Parliament with respect to matters in List I. Likewise, the Legislature of a State has been invested with exclusive power to make laws with respect to matters in List II. Parliament and State Legislatures have concurrent powers with respect to matters enumerated in List III.

2.3.05 The powers assigned to the State Legislatures under Article 246 is expressly subject to the Supremacy of Parliament in case of irreconcilable overlap between the Lists. A facet of the same principle, applicable in the Concurrent sphere, is embodies in Article 254(1).

2.3.06 Article 248 read with Entry 97 of List I gives exclusive power to Parliament to make any law with respect to any matter not enumerated in the Concurrent List of the State List.

2.3.07 The provisions of Articles 249 to 253 are in the nature of exceptions to the normal rule that in respect of a matter coming in its pith and substance within the State List, the State Legislatures have exclusive power to make law.

2.3.08 Article 249 enables Parliament to legislate with respect to a matter in the State List, if the Rajya Sabha[2] by a two-thirds majority passes a resolution that it will be expedient in the national interest to do so. The life of such a legislation cannot exceed one and a half years.

2.3.09 Parliament may also legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation (Article 250).

2.3.10 Parliament may also legislate for two or more States by consent with respect to a matter in the State List. Any other State can also adopt such a Legislation (Article 252).

2.3.11 Parliament can also legislate in the State field to the extent necessary for giving effect to an international agreement (Article 253).

2.3.12 Apart from the provisions contained in Chapter I of Part XI, there are Articles 352, 353, 358 and 359 (read with Article 250) and Article 360 which govern legisative relations between the Union and the States during an Emergency. The inter-linked Articles 356 and 357 govern Union-State relations during the President's Rule. The reservation of State Bills under Article 200 and the exercise of its powers by the Union Executive with respect to such Bills under Article 201 have a direct impact on Union-State relations

in the legislative sphere. Several Articles, such as Article 3, 4, 31A, 31C, 285, 286, 288, 289, 293 and 304(b) have also a bearing on these relations.[3]

4. *CRITICISM AND ITS CLASSIFICATION*

2.4.01 There is total unanimity among all cross-sections of public opinion in regard to the need for a strong Union to enable it to maintain and protect the unity and integrity of the country. The cenral theme of the criticism levelled against the working of Union-State legislative relations is “over-centralisation". The criticism may be classified into four broad categories.

2.4.02 **Category-I**—Most State Governments, political parties and eminent persons, who have communicated their views to us, believe that there is nothing fundamentally wrong with the scheme of the Constitution in securing a constitu-tionally ‘strong Centre’ having adequate powers both in extent and nature. They accept that only a strong Centre can effectively preserve the unity and integrity of the nation. They agree that in time of ‘emergency’ (as defined in Article 352), the Union should be able to exercise full powers with respect to all matters in the three Lists of the Seventh Schedule. But, they also emphasise that in normal times, the division of powers between the Union and States, which really represents the basic ‘federal characteristic’ of our Constitution, should not only be scrupulously observed but also amplified by further decentralisation to the Units. They complain that, in practice, this has not happened. They contend that undue centralisation has occurred or been brought about in the working of the Union-State arrangements by making indiscriminate declarations of public interest or of national importance under certain Entries in the Union List which control certain inter linked Entries in the State List or the Concurrent List. They have a grievance that the Union has in several matters enunmerated in the Concurrent List, occupied the field of legislation in its entirety. Further, the Union has sought to dictate its policy to the State Legislatures with regard to such matters by improper use of its power under Article 201 with respect to Bills passed by the State Legislatures. They suggest that before Parliament undertakes legislation with regard to a Concurrent matter the State Governments must be consulted.

2.4.03 **Category II**—Four State Governments and their supporting political parties and a few others have severely criticised both the structural and functional aspects of the Union-State Legislative Relations. They contend that the Constitution is much too tilted in favour of the Union and this imbalance needs rectification by restructuring these relations. They ask for exclusion of those clauses and words from Articles 246 and 254 which give predominance to the legislative power of the Union over that of the State Legislatures. In common with the first category, they complain that further over-centralisation and distortion of the constitutional scheme has been brought about by working it in a manner contrary to the letter and spirit of the Constitution. They suggest drastic structural changes such as abolition or substantial reduction of the Concurrent List and transfer of all or most subjects therein to the State List. They further suggest reformulation of Article 248 so as to vest the residuary powers in the State Legislatures. They have also asked for deletion or substantial modification of Articles 31A, 31C, 154(2), 249, 252, 253, 254 etc. Two in this category have further suggested reformulation or transfer of several Entries in List I to List II or List III.

2.4.04 **Category III—**Proceeding on the premise that “India is a federal and republican geographical entity of different languages, religions and cultures” one Regional party has submitted to us a resolution by its “Whole House” which urges *inter alia* that to “safeguard the fundamental rights of the religious and linguistic minorities, to fulfill the demands of democratic traditions and to pave the way for economic progress, it has become imperative that the Indian Constitu-tional infrastructure should be given a real federal shape by redefining the Central and State relationships on the aforesaid principles and objectives”. It mentioned that an earlier draft of this resolution by its “Working Committee” had no doubt demanded that the interference of the Union should be restricted to Defence, Foreign Relations, Currency and General Communications only and all other governmental powers (including residuary powers) should be assigned to the States. Further, that the States would contribute for the expenditure of the Union in respect of the

above subjects. But its “Whole House” had substantially amended that in the final resolution which was passed and was authenticated by its then President.

Be that as it may, it has at the same time, proposed not only redistribution of subjects on a threefold basis, “among the Union List, the Concurrent List and the State List”, but also that “the executive power in respect of matters included in the Concurrent List, irrespective of the fact as to whether legislation is by the

Centre or by the State should vest with the States”. It has propounded that “the Union taxes/duties should be demarcated from the States' domain of taxation”. Further it has suggested that the Finance Commission should be reactivated to discharge its Constitutional duties.

The State Government, where this Regional party was in power, has suggested shifting of several Entries from the Union List to the State List and a few to the Concurrent List. It has sought a drastic reduction of the Concurrent List. But, it has not suggested deletion or abolition of the Concurrent List or any major change with respect to the heads of taxation enumerated in the Union List.

2.4.05 **Category IV—**Critics in this category have chosen a middle course. They want only a few structural changes, and, in common with those in categories I and II, substantial changes in the functional aspects of Union-State legislative relations. They suggest reformulation of Article 248 so as to vest the residuary power in the State Legislatures. Two State Governments, including one in category III, would have this power placed in the Concurrent List. Another has asked for reformulation of Article 3 also.

2.4.06 We have, therefore, examined the scope of the Constitutional provisions, the manner in which they have been worked during the last thirty-seven years, the validity of the criticism levelled and the need for remedial measures. The remaining part of this Chapter has been divided into four Parts for convenient examination of the various issues. Part I deals with Articles 245, 246, 248 and 254(1).[4] In Part II, we have considered the structure and the use of the entries in the three Lists of the Seventh Schedule.[5] Part III deals with issues relating to Articles 247, 249 and 252.[6] In Part IV, we have covered all the miscellaneous provisions not comprised in Chapter I of Part IX of the Constitution, but which are strewn at other places in the Constitution and have not been dealt with at length in any other Chapter of this Report. These are Articles 3, 4, 31A, 31C, 154(2)(b), 258, 169, 269, 285, 286, 288, 289, 293, 304(b), 368 and 370.[7]

5. *PART I—ARTICLES* 245, 246, 248 & 254

Articles 245 & 246

2.5.01 Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State (Article 245).

2.5.02 Article 246 read with Schedule VII of the Constitution, provides for distribution of legislative powers. It reads :

“(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List").

(2) Notwithstanding any thing in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the “State List”.

Non-Obstante Clause : Rule of Union Supremacy

2.5.03 The *non-obstante* clause in the beginning of clauses (1) and (2) and the words “subject to clause (1)” in clause (2) and the words “subject to clauses (1) and (2)” in clause (3) of Article 246 are based on the principle of Union Supremacy. It implies that where there is an irreconcilable conflict or overlapping as between Entries in the three Lists, the legislative power conferred on Parliament under clauses (1) and (2) shall predominate over that of the State Legislatures.

Rationale of the Rule

2.5.04 The subjects of legislation enumerated in these Lists have been made, as far as possible, mutually exclusive. Nonetheless, it has been observed that “it would be a supreme draftsman who could so draw these Lists that no charge of overlapping could be brought against them.[8] Despite an attempt to make the Legislative Lists mutually exclusive, some overlapping may remain due to limitations of drafting.

Application of the Rule : Test of Pith and Substance

2.5.05 Moreover, no unfailing formulae for identifying matters of exclusive 'national' or 'local' concern or of 'concurrent' interest is available. These concepts are neither absolute nor constant. While in some matters overlap between the Lists is inevitable, in certain others it is part of a deliberate design to ensure the adaptability of the system to changing times and circumstances. If it is not possible to eliminate such overlapping absolutely, how is the resultant conflict resolved? The *non-obstante* clause in Article 246 supplies the answer. However, this *non-obstante* clause “ought to be regarded as a last resource, a witness to the imperfections of human expression and the fallibility of legal draftsmanship”.[9] Therefore, when a question of an apparent conflict between mutually exclusive Lists, *e.g*., List I and List II, arises, the first attempt should be to reconcile them. This is done by applying the test of 'pith and substance'. The impugned legislation is examined as a whole to ascertain its true nature and character for the purpose of determining whether it falls in List I or List II. If by this test it is found that in pith and substance it falls under one of these Lists, but in regard to incidental or ancillary matters it encroaches on an Entry in the other List, the conflict would stand resolved in favour of the former List. If the overlapping or conflict between the two Lists cannot be fairly reconciled in this manner, the power of the State Legislature with respect to the overlapping field in List II, must give way to List I. In short, when a matter, in substance, falls within the Union List, Parliament has exclusive legislative power with respect to it, notwithstanding that it may be covered also by either or both the other two Lists.

Rule of Repugnancy

2.5.06 Another facet of the rule of Legislative Supremacy of the Union is contained in Article 254 which provides:

> “(1) 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 law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
>
> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repupgnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :
>
> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

2.5.07 In the context of this Article, the expression “existing law” would mean a pre-Constitution law in force, relating to a matter in the Concurrent List, *vide* Article 366(10).

2.5.08 From the provisions quoted above, it is clear that the substance of the rule of repugnancy contained in clause (1) of Article 254 is that with respect to a matter in the Concurrent List, a valid Union Law or an existing law prevails over a repugnant State law which is otherwise valid, to the extent of repugnancy. Clause (2) is an exception to clause (1). It relaxes the rigidity of the rule of repugnancy contained in clause (1), in as much as it lays down that if a law passed by State Legislature in respect of a matter in the Concurrent List, receives President's assent, then such a law would prevail notwithstanding its being inconsistent with the law passed by Parliament or an existing law on the subject. However, this

exception is not absolute. The proviso clarifies that such a law which had received the President's assent can be amended, varied or repealed by Parliament, either directly or by passing a law inconsistent with it.

2.5.09 Although the *non-obstante* clause of Article 246, and clause (1) of Article 254 are facets of the rule of 'Union Supermacy', there is a difference in the nature, extent and effect of their operation. While the *non-obstante* clause of Article 246 is attracted when there is an irreconcilable conflict between the mutually exclusive Legislative Lists, Article 254(1) applies only where there is repugnancy between a Union law and

a State law, both occupying the same field with respect to a matter in the concurrent List. It has no application where the State law in its pith and substance falls within an Entry in the State List, its incidental trespass on an Entry in the Concurrent List notwithstanding. Further, a challenge on the ground of *non-obstante* clause of Article 246 is more fundamental than the one on the plea of repugnancy under Article 254(1), as the former goes to the root of the jurisdiction of the legislature concerned. Article 254(1) does not rest on the principle of ultra vires, but of repugnancy, which renders the State law 'void' *i.e*., 'inoperative' or mute only to the extent of repugnancy.

Pre-requisites for application of the rule of Repugnancy

2.5.10 'Repugnancy' under Article 254(1) arises where

(i) there is in fact, such a direct conflict between the provisions of a Union law or an existing law and a State law, occupying the same field with respect to the same matter in List III, that the two provisions cannot stand together and it is not possible to obey the one without disobeying the other;

OR

(ii) The Union law was clearly intended to be a complete and exhaustive code, replacing the State law with respect to a particular matter in the Concurrent List.

If all the conditions of either proposition are not fully satisfied, the rule of repugnancy contained in Article 254(1) will not be attracted.

Criticism : Issues raised regarding Article 246 & 254

2.5.11. As noticed already, most State Governments, political parties and eminent persons find no fault with the structural aspects of Articles 246 and 254.Only two State Governments have asked for reformulation of Article 246 so as to exclude from its words and clauses which give supermacy to the Union legislative power over that of the States. One of them has suggested that Article 246 be substituted by a new Article which will read as follows:

"**246. Subject-matter of laws made by Parliament and by the Legislatures of States**—(1) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Parliament and subject to clause (1), the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

Provided that no such law shall be made by Parliament except with the concurrence of the State Legislature.

(3) The Legislature of any States has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the "State List".

2.5.12 This State Government has further suggested that the Proviso to Article 254 should be revised so as to read as under:

"Provided that Parliament shall have no power to enact at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by Legislature of the State."

It is claimed that such a reformulation of Article 246 would “preserve the prerogative of both the Parliament and the States in their respective legislative fields”. The suggestion is designed to secure: (i) that in case of an irreconcilable conflict or overlapping between the three Legislative Lists, the power of Parliament does not prevail over that of the State Legislatures : and (ii) that Parliament has no power to legislate with respect to matters in the Concurrent List except with the concurrence of the State Legislatures.

2.5.13 The suggestions dealt with in the preceding paragraphs are based on the proposition that no law should be enacted by Parliament in respect of a matter falling within the Concurrent List except with the concurrence of the State Legislature. If no such concurrence is obtained then the law made by Parliament in respect of a Concurrent subject *will not be applicable to that State.* Another State Government has suggested : “The States' legislative competence with regard to the Concurrent List may be reinforced by providing, by a Constitutional amendment, that whenever the Union proposes to legislate on a concurrent matter, it shall be obligatory for it to consult seriously, and not in a mere perfunctory manner, the States and to secure the approval of the majority of them to the proposal. If the majority of the States disapprove of the proposal, the Union will need to recast it taking into account the States' views so as to secure approval of a majority of States for it. Otherwise the proposal shall be dropped.” According to it, a possible alternative approach to safeguarding the competence of the States with regard to the Concurrent List may be that, though prior genuine consultation is made obligatory, approval of the proposed legislation by a majority of the States is not insisted upon. Instead, States which do not approve of it are excluded from the purview of this legislation. The State Government itself asserts that this approach is inappropriate.

2.5.14 Three other State Governments have asked for modification or deletion of Article 254, although the modifications suggested vary in nature and extent. One of them has suggested abolition of or amendment to Article 254 so that “no State could be deprived of any legislative powers which belong to it without its prior concurrence.”

2.5.15 One State Government has suggested modification of clause (2) of Article 254 as follows:—

“(a) In the proviso, after the word 'provided' the word, 'further' may be inserted.

(b) After the clause and before the proviso as amended in sub-clause (a), the following proviso may be inserted, namely—

“Provided that if the approval of the President is not received within a period of one year from the date of its receipt the law shall be deemed to have been approved by the President.”

In Chapter V we have examined the causes of delay in processing State Bills reserved for President's consideration. We have found that one of the important factors which contribute to such delays is the abnormally heavy inflow of reserved Bills into the Union Secretariat.[10]

2.5.16 The demand of some of the State Governments and their supporting political parties seeking radical changes in the scheme of legislative relations, in general, and Articles 246 and 254, in particular, rests on the broad premise that this is necessary to bring about a 'true' federation.

Supremacy Rule is the Key-stone of Federal Power

2.5.17 An appraisal of this criticism can appropriately begin by addressing ourselves to the question, whether the two-fold principle of union Supremacy in Articles 246 and 254 is an anti-federal feature of our Constitution. The Constitution of the United States of America which has been considered the most 'federal' and unquestionably the pioneer in experimenting with federalism —*inter alia* provides that the laws of the United States made in pursuance of the Constitution shall be the supreme law of the land; and anything in the Constitution or laws of any State to the contrary notwithstanding. This provision, known as Supremacy Clause has been interpreted by their Supreme Court to mean that “State action incompatible with any legitimate exercise of federal power, loses all validity even though taken within a sphere in which the States might otherwise act”.[11] Because of the Supremacy clause, Federal and State powers do not stand on equal elevation. This clause has been called the very key-stone of the arch of federal power”[12].

Analogous Principle recognised in Canada

2.5.18 In Canada, judicial decisions have held (i) that if there is an irreconcilable overlapping or conflict as between the heads of Dominion and Provincial power enumerated in Sections 91 and 92, respectively, the latter shall yield to the former and (ii) that a Dominion legislation which strictly relates to a head of its power enumerated in Section 91 is of paramount authority, notwithstanding the fact that it trenches upon a head specified in Section 92.

Position in Australia not different—Section 109 of Australian Constitution

2.5.19 The Commonwealth Parliament of Australia has exclusive powers in certain matters (Sections 52, 90, 111, 114 and 115). Out of the 39 heads of power enumerated in Section 51 some are within the exclusive competence of Commonwealth Parliament but others are, by implication, concurrent. Section 109 provides: "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid".

2.5.20 The West German Constitution gives supremacy to Federal legislation in case of conflict with State legislation.

Rule is kingpin of the System

2.5.21 In every Constitutional system having two levels of government with demarcated jurisdiction, contents respecting power are inevitable. A law passed by a State legislature on a matter assigned to it under the Constitution though otherwise valid, may impinge upon the competence of the Union or *vice-versa.* Simultaneous operation side-by-side of two inconsistent laws, each of equal validity, will be an absurdity. The rule of Federal Supremacy is a technique to avoid such absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle, therefore, is indispensable for the successful functioning of any federal or quasi-federal Constitution. It is indeed the kingpin of the federal; system. "Draw it out, the entire sytem falls to pieces"[13].

2.5.22 If the principles of Union Supremacy are excluded from Articles 246 and 254, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by internecine strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union-State concern will be stymied. The federal principle of unity in diversity will be very much a casualty. The extreme proposal that the power of Parliament to legislate on a Concurrent topic should be subject to the prior *concurrence* of the States, would, in effect, invert the principle of Union Supremacy and convert it into one of State Supremacy in the Concurrent sphere. The very object of putting certain matters in the Concurrent List is to enable the Union Legislature to ensure uniformity in laws on their main aspects throughout the country. The proposal in question will, in effect, frustrate that object. The State Legislatures because of their territorially limited jurisdictions, are inherently incapable of ensuring such uniformity. It is only the Union, whose legislative jurisidiction extends throughout the territory of India, which can perform this pre-eminent role. The argument that the States should have legislative paramountcy over the Union is basically unsound. It involves a negation of the elementary truth that the 'whole' is greater than the 'part'.

2.5.23 The suggestion (vide para 2.5.15 above) that a Proviso be added to clause (2) of Article 254 to the effect that President's approval should be deemed to have been received, if the same is not formally given within a period of one year from the date of receipt of the Bill, and the causes of delay in processing State Bills reserved for President's consideration have been examined in Chapter V. Certain suggestions for streamlining the processing of such cases have been made. A specific recommendation has also been made that as a matter of salutary convention such references should be disposed of by the President within a period of 4 months from the date on which the reference is received by the Union Government.[14]

2.5.24 For all the reasons aforesaid, we are unable to support the suggestions for structural changes in Articles 246 and 254 of the Constitution.

6. *ARTICLE 248 READ WITH ENTRY 97.*

LIST I OF SCHEDULE VII

2.6.01 Residuary powers of legislation with respect to any matter not enumerated in the Concurrent List or State List have been vested by Article 248 of the Constitution in Parliament. Such residuary powers include the power of making any law imposing a tax not mentioned in these Lists. Entry 97 of the Union

List is to the effect: “Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists”.

Genesis—Analogy of Canada

2.6.02 The genesis of these provisions may be traced back to the British North America Act, 1867[15], which gave the residuary powers to the Dominion Parliament. Section 91 of that Act provides that it shall be lawful for the Parliament of Canada to make laws “in relation to all Matters not coming within the Classes of Subjects of this Act assigned exclusively to the Legislatures of the Provinces”. Section 104 of

the Government of India Act, 1935, departing from the Canadian pattern, vested the residuary powers in the Governor-General who could, in his discretion, by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to that Act, including a law imposing a tax not mentioned in any such Lists.

Historical Background and rationale of Article 248

2.6.03 The framers of the Constitution drew up three exhaustive Legislative Lists. They included in one or the other of these Lists all topics of legislation which they could then conceive of or foresee. However, they were conscious of the fact that human knowledge being limited and perception imperfect, in future a contingency may arise where it becomes necessary to legislate in regard to a matter not found in any of the three Lists. To take care of such unforeseen eventualities they made the residuary provisions in Article 248 and Entry 97 of List I. This is the rationale of Article 248. There was, yet, another important consideration that weighed with the framers of the Constitution in vesting these residuary powers in Parliament. After the question of the partition of the Indian sub-continent became a settled fact, the framers decided that the framework of the Constitution would be a federation with a strong Centre. In firm pursuit of this objective, they gave larger and dominant powers of legislation to the Union Legislature. The conferment of these residuary powers particularly in matters of taxation on Parliament is a part of the constitutional scheme designed by them to secure a 'strong Centre'. After emphasising the need for a strong Central authority capable of ensuring peace and coordination of vital matters of common concern, Jawaharlal Nehru, Chairman of the Union Powers Committee, reported to the Constituent Assembly as under[16];

> “We think that residuary powers should remain with the Centre. In view however of the exhaustive nature of the three Lists drawn up by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present identifiable and cannot therefore be included now in the Lists.”

Issues raised regarding Residuary Powers

2.6.04 Most State Governments do not seek any change in the existing provisions relating to the residuary powers. However, four State Governments have suggested that the residuary powers should be vested in the States, and two State Governments have proposed that Entry 97 of List I be transferred to the Concurrent List.

Limited scope of residuary power—Very few legislations attributable solely to Residuary Power

2.6.05 Enumeration of topics of legislation in the Legislative Lists is so exhaustive that some of the framers of the Constitution thought that they were leaving little for the residuary field. Some of them even predicted that the residuary power would largely remain a matter of academic significance. The thirty-seven years of the working of the Constitution have not demonstrably belied this prediction. The result of our study (*vide* Annexure II.1) shows that there are very few reported decisions of the Supreme Court/High Courts where the competence of Parliament to enact a Union Statute has been ascribed *solely* to the residuary power. However, the number of cases in which the residuary power of Parliament for sustaining the validity of a Union Statute was relied upon as an alternative or additional ground, is not insignificant.

2.6.06 Out of the 9 Union Laws[17] of the former category identified by us, four were special remedial statutes; one was passed to rescue several States from embarrassing situations in which they had landed themselves by collecting unauthorised taxes. Another was passed to give, with retrospective effect, validity to the Constitution and proceedings of the Legislative Assembly of an erstwhile Part-C State. A third was passed to take over the management of a public institution though it had been earlier registered under the

Societies Registration Act. A fourth was passed to curb the evil practice using certain emblems for commercial purposes. The remaining 5 were taxation laws. Out of them two have since been repealed. Thus, only 3 Union Laws are in force with respect to which the competence of Parliament can be wholly attributed to its residuary power.

Principles of Interpretation of Entry 97, List I

2.6.07 Prior to the decision (October 21, 1971 in *Union of India* Vs. *H.S. Dhillon*[18], the Supreme Court consistently held that before recourse can be had to the residuary Entry 97 of List I it must be found as a

fact that there is no Entry in any of the three Lists under which the impugned legislation can come. For, if the impugned legislation is found to come under any Entry in List II, the residuary Entry will not apply. Similarly, if the impugned legislation falls within any Entry in one or the other of the two remaining Lists, recourse to the residuary Entry will hardly be necessary. The Entry is not a first step in the discussion of such problems but the last resort. (Per Hidayatullah J. in *Hari Krishna Bhargava* Vs. *Union of India.*[19]).

2.6.08 The decision in *Dhillon's case* (rendered by a majority of 4 judges against 3) appears to deviate from this principle, particularly, with regard to the residuary power of Parliament in matters of taxation. According to the ratio of *Dhillon's case,* once it is established that the taxing power claimed is not covered by any Entry in List II or List III, it is competent for Parliament to resort to its residuary power under Entry 97, List I or to combine it with its power under Entry 86, or any other Entry in List I. The correctness of this decision continues to be the subject of perennial debate in academic and legal circles.[20] We do not want to enter into this controversy. It will be sufficient to say that the majority decision in Dhillon's case turns on its own peculiar facts. One of the difficult questions before the Court was, whether what was excluded by the words “exclusive of agricultural land” from the competence of Parliament under Entry 86 of List I could be brought back through the 'residuary' door of Entry 97 in List I. The Court answered this question in the affirmative, particularly in view of its finding that the impugned provision did not fall within the competence of the State Legislatures either under Entry 49 or any other tax-topic in List II.

2.6.09 Be that as it may, the general principle which still holds the field in that all the Entries in the three Lists, including the specific Entries 1 to 96 in the Union List, should be given broad interpretation so as to avoid resort to the residuary Entry 97. If there is a competition or apparent conflict between items in the State List and the 'specific' items in Union List/Concurrent List, attempt should be made to harmonize them if necessary, by delimiting their scope. But, “where the competing entries are an Entry in List II and Entry 97 of List I, the Entry in the State List must be given a broad and plentiful interpretation”. This principle was reiterated by the Supreme Court in a recent decision. It was emphasised that in a Constitution like ours “where there is a division of legislative subjects but the residuary power is vested in Parliament, such residuary power cannot be so expansively interpreted as to whittle down the power of the State Legislatures”. (M/s. *International Tourist Corporation* Vs. *State of Haryana.*[21])

Experience of other Federations

2.6.10 The proponents of the proposal to assign the residuary powers to the States draw their inspiration from the Constitution of the United States of America and of the Commonwealth of Australia. The Constitutions of these countries give enumerated powers to the National Government and the undistributed residum to the Units. The proponents do not appear to have gone behind the theoretical facade of these Constitutions to see their functional reality and historical background. They have overlooked two crucial facts. The first is that, in the United States, the federation came into existence as a result of a voluntary compact whereby the pre-existing independent States surrendered a part of their sovereign powers with respect to certain specified matters of common concern to a unified federal entity, retaining the unsurrendered residue with them. The Commonwealth of Australia was also formed in a similar manner. The mode of formation of the Union of States in India was entirely different. Even under the Government of India Act, 1935, which introduced the federal concept, the Provinces were not sovereign entities. The Constitution of India is not the result of any agreement or compact between sovereign independent Units. The basic premise on which the non-descript residuary powers could be left with the constituent units, did not exist in the case of India. The Units (Provinces/States) have been the creature of the Constitution. The Constitution itself was framed by the ‘People of India’ in the Constituent Assembly. Thus, from a historical

stand-point, the constituent units of the Indian Union has no pre-existing right or inherent claim to be invested with the residuary powers.

2.6.11 The second stark fact which has escaped their notice is that, both in Australia and the United States of America, there has been a continuous expansion of the functional role of the Federal Government. Such expansion has completely altered the federal balance of powers in favour of the National Government with corresponding attenuation of the residuary powers of the constituent States.

2.6.12 How this transformation has come about in America can best be described in the words of United States Advisory Commission on Inter-Governmental Relations. Reporting in July 1980, this Commission observed:

> "The period since about 1960 has been an era of dramatic, even drastic, change in American Federalism.... The resulting transformation in fiscal, administrative and political arrangements has left no governmental jurisdiction, and very few citizens untouched. The rate and magnitude of change has been so great over this period that some observers content that an entirely new inter-governmental system has emerged."

> Again in June, 1981, the same Commission reported: "....Since the so-called Roosevelt-Court battle in 1937, Congress has been relatively unconstrained in its interpretation of what is 'necessary and proper', of what constitutes legitimate spending for the 'general welfare' and of what activities-intra as well as inter-State are justifiable national concerns under the inter-State Commerce clause. Moreover, since the early 1920s, the (Supreme) Court has consistently given its okay to the accomplishment of national purpose through conditional grants-in-aid. All of these 'green lights' offered to Congress the legal mechanisms for expanding the federal functional role."

> "Thus through the mid of late 1950s and continuing and gaining momentum through the 1960s and 1970s, what has come to be known as "judicial activism" worked both directly and circuitously to enlarge the number and type of functions that were to be legitimate national activities under Congress substantial spending and commerce powers and under the First and Fourteenth Amendments.....[22]

2.6.13 As in the United States of America so in Australia, the Courts, through liberal interpretation of the Constitutional provisions, have helped substantial extension of the federal legislative power into fields which were originally considered to be the exclusive concern of the States.

2.6.14 The experience of the working of the federation in the United States of America and in Australia shows that expansion in the power of the Central Government with relative decline in that of the State Governments is inevitable to reach something of an equilibrium in that delicate balance of Central and State powers essential to the working of a federal system under modern world conditions. The Courts play a significant role as a balancing wheel for harmonious adjustment of Union-State relations.

2.6.15 For reasons mentioned in the preceding paragraphs, we are unable to accept the suggestion that residuary powers should be vested in the States.

2.6.16 We now take up for consideration the suggestion that Entry 97 of the Union List be transferred to the Concurrent List. Such an arrangement would have the advantage of enabling both the Union and the States to legislate in regard to any new matter, which is not enumerated in any of the three Lists. However, it is noticed that Entry 97 of List I read with Article 246 and Article 248 includes the power of imposing a tax not mentioned in either List I or List II. The Constitution-makers did not place any Entry relating to tax in the Concurrent List. They advisedly refrained from doing so, to avoid Union-State frictions, double taxation and frustrating litigation. The placement of the residuary matters of taxation in the Concurrent List, therefore, would run counter to these basic considerations underlying the scheme of the Constitution. Further, the power to tax may be used not only to raise resources but also to regulate economic activity. Situations may arise where, under the garb of a new subject of taxation, a State may legislate in a manner prejudicial to national interest. We are of the view that residuary power of legislation in regard to taxation should advisedly remain with Parliament. But, the residuary field other than that of taxation, may be transferred to the Concurrent List.

2.6.17 We have noted earlier that one of the reasons for vesting residuary powers in the Union was the need for ensuring a strong Centre. The proposal which we are making does not detract from the objective;

for, the residuary matters of taxation would continue to remain in the Union List. Only non-descript matters (*sans* taxes) would be excluded from the ambit of Entry 97, List I and transposed to the Concurrent List. The exercise of legislative power of the States with respect to such residuary non-tax matters, in the Concurrent List, would also be subject to the rules of Union Supremacy built in the scheme of the Constitution, particularly Articles 246 and 254.

2.6.18 We recommend that residuary powers of legislation in regard to taxation matters should remain with Parliament, while the residuary field, other than that of taxation, should be placed in the Concurrent List. The Constitution may be suitably amended to give effect to this recommendation.

7. *PART II—STRUCTURAL & FUNCTIONAL ASPECTS OF THE LEGISLATIVE LISTS*

Outline and Scheme of the Legislative Lists

2.7.01 Originally, there were 97 items in the Union List, 66 in the State list and 47 in the Concurrent List. As a result of subsequent amendments of the Constitution, the number of Entries in the Union List and the Concurrent List has increased to 99 and 52, respectively; while the number of Entries in the State List has decreased to 62. (Details of the additions and deletions are given in Annexure II.2).

2.7.02 The Union List includes matters, such as, Defence, Foreign Affairs, Foreign Jurisdictions, Citizenship, Railways, Posts & Telegraphs, Telephones, Wireless, Broadcasting and other like forms of communication, Airways, Banking, Coinage, Currency, Union Duties and Taxes etc. The Union has exclusive legislative power with respect to matters in the Union List. The State List includes items such as, Public Order, Police, Public Health, Local Government, Agriculture, Land, Rights in or over Land, Land Tenures, Land Improvement, Alienation of Agricultural Land, Colonisation, Fisheries, Markets and Fairs, Money Lending and Money Lenders, Relief of Agricultural Indebtedness, Preservation, protection and improvement of live stock and prevention of animal diseases etc. and certain duties and taxes. The State Legislatures have exclusive powers of legislation with respect to matters in the State List. The Concurrent List includes items of concurrent legislative jurisdiction of the Union and the States, such as, Criminal Law, Criminal Procedure, Administration of Justice, Con-stitution and Organisation of all Courts, except the Supreme Court and the High Courts, Marriage and Divorce, Adoption, Wills, Intestacy and Succession, Contracts, Actionable Wrongs, Trusts and Trustees, Civil Procedure, Forests, Economic and Social Planning, Population control and Family Planning, Social Insurance, Welfare of Labour, Commercial and Industrial monopolies, Legal, Medical and other professions, Price Control etc. There are no taxes and duties in the Concurrent List.

2.7.03 The three-fold division of subjects of legislation rests on the broad postulate that matters of national concern are placed in the Union List and those of purely State or local significance in the State List. Matters of common Union-State interest requiring uniformity in main principles throughout the country are included in the Concurrent List. Nonetheless, these three Lists do not effect a water-tight division.

Entries having Inter-face or enabling the Union to Control or take over State Field

2.7.04 It is inevitable that many Entries in the State List should have an inter-face with those in the Union and Concurrent Lists. In the Constitutional scheme six different patterns of inter-connection can be discerned. Certain aspects or parts of a subject may be of local concern, while other aspects of the same subject are of national importance (Group I). Some subjects of legislation, which belong exclusively to the States are made expressly subject to certain Entries in the Concurrent List (Group II). Certain other subjects in List II have been similarly made subjects to certain provisions in the Union List (Group III). Certain Entries in List II have been made subject to laws made by Parliament (Group IV). Certain subjects which in the first instance are within the exclusive competence of the States, can become the subject of exclusive Parliamentary legislation if the requisite declaration of public interest or national importance, as the case may be, is made by Parliament by law (Group V). Yet another pattern of inter-connection is seen in certain Entries in List III being made subject to certain Entries in List I or a law made by Parliament (Group VI).

2.7.05 We have identified the important Entries having an inter-face and classified them into these six groups, as shown below. It is not claimed that this grouping is perfect. While illustrating the pattern of

inter-connection, it does not denote rigid compartmentalisation. An Entry may have attributes of more than one group.

Group I

(i) With respect to “roads, bridges, ferries and other means of communication”, Entry 13, List II covers only the remainder of the same matters in the Union List.

(ii) Entry 63 of List II with respect to rates of stamp duty on documents other than those specified in List I (e.g. in Entry 91, List I).

(iii) Entry 32, List II includes only the remainder of what in the same area, is covered by Entries 43 and 44 of List I.

Group II

(i) Entry 26 (Trade and Commerce within the State) and Entry 27 (Production, Supply and distribution of goods) in List II are subject to Entry 33 of List III.

(ii) Entry 57 (Taxes on Vehicles) of List II is subject to the provisions of Entry 35 of List III.

Group III

(i) Entry 2 (Police) of List II is subject to the provisions of Entry 2A, (Deployment of armed forces.... of the Union in aid of the civil power) in List I.

(ii) Entry 13 of List II, with respect to inland waterways and traffic thereon, is subject *inter alia* to Entry 24 of List I and, among others, to Entry 32 of List III.

(iii) Entry 22 of List II is subject to Entry 34 of List I, with respect to Courts of Wards.

(iv) Entry 33 with respect to 'Theatres and dramatic performances, cinemas', in List II is subject to Entry 60 of List I.

(v) Entry 54 (Taxes on the sale or purchase of goods) of List II is subject to Entry 92A of List I.

Group IV

(i) Entry 37 of List II (Elections to State Legislatures) is subject to provisions of any law made by Parliament.

(ii) Entry 50 (Taxes on mineral rights) of List II is subject to any limitations imposed by Parliament by law relating to mineral development.

Group V

(i) Entry 17 (Water supplies, irrigation and canals, drainage and embankments, water storage and water power) of List II is subject to the provisions of Entry 56 of List I which enables the Union to take over regulation and development of Inter-State rivers and 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.

(ii) Entry 23 (Regulation of mines and mineral develop-ment) in List II is subject to the provisions of List I with respect to regulation and development under the control of the Union, to the extent it is declared by Parliament by law to be expedient in the public interest, in terms of Entry 54 of List I.

(iii) Entry 24 (Industries) in List II is expressly subject to the provisions of Entries 7 and 52 of List I, and its field becomes a subject of exclusive competence of the Union if Parliament by law makes the requisite declaration under Entry 7 or 52 of List I, as the case may be.

(iv) By making the requisite declaration of national importance in terms of Entries 62, 63, 64 and 67 of List I, Parliament can enable the Union to take over, wholly or in part, the field of certain Entries, such as, Entries 12 and 32 in List II and Entries 25 and 40 of List III.

Group VI

(i) Entry 19 of List III, is subject to Entry 59 of List I, with respect to opium.

(ii) Entry 31 of List III is subject to law made by Parliament.

(iii) Entry 32 of List III is subject to the provisions of List I, with respect to national waterways.

(iv) Entry 33(a) of List III, with respect to 'trade and commerce in and the production, supply and distribution of, the products of any industry' is subject to any law made by Parliament by making a declaration of public interest under Entry 52 of List I.

(v) Entry 40 (Archaeological sites and remains) of List III is subject to law made by Parliament by making a declaration of national importance under Entry 67 of List I.

(vi) Entries 63 to 65, List I *inter alia* deal with certain educational institutions, and Entry 66 of List I deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Entry 25 of List III, dealing with education, including universities, is subject to Entries 63 to 66 of List I.

8. *CRITICISM AND ISSUES RAISED REGARDING THE UNION LIST*

2.8.01 Most State Governments, political parties and others do not desire any basic change in the structure of the Union List. Their criticism is chiefly directed against the operational use of the Union List. The complaint is that the Union has through indiscriminate use of its legislative power under some of the Entries in List I, particularly Entries 52 and 54, appropriated to itself needlessly excessive area of the State field, resulting in relative denudation of the States' legislative power under Entries 24 and 23, respectively, of List II. This complaint has been voiced by almost all the State Governments. However, one in this group, wants Entry 56 of List I to be transferred to the Concurrent List.

2.8.02 Two State Governments and some others complain that the scheme of distribution of powers is too much biased in favour of the Union and it requires revision. However, they have not made any specific proposals for deletion, reformulation or transfer of any item of the Union List, except that one of them has stated that items like 'Broadcasting' (which is part of Entry 31 of List I) should be transferred to the Concurrent List, and that the scope of Entry 52 of List I be circumscribe by clearly defining the terms 'public interest'. Two other State Governments have suggested transfer of certain tax-items to the State List.

2.8.03 Another State Government and an All India Party maintain that “while enlarging the scope of the States' sphere, we must also try to preserve and strengthen the Union authority in subjects....such as Defence, Foreign Affairs including Foreign Trade, Currency, Communication and Economic Coordination”. This statement is rather vague and general. It is difficult to construe it as a plea for limiting the authority of the Union, to the few subjects such as Defence, Foreign Affairs, Currency etc. and for transferring the other items in List I to List II.

2.8.04 As noted in paragraph 2.4.04 the “Working Committee” of a Regional party had demanded in a draft resolution that the jurisdiction of the Union should be restricted to only four subjects, namely: Defence, Foreign Relations, Currency and General Communications and the rest of the subjects should be the responsibility of the States. But neither the “Whole House” nor the President of that same Regional Party, who appeared before us, nor any other political party that has communicated its views to us, nor any State Government, has taken such an extreme stand.

2.8.05 One State Government has suggested extensive structural changes affecting 29 Entries in the Union List. It has asked for total omission of Entry 2A. It has suggested reformulation, partial deletion or transfer, wholly or in part, of Entries 7, 24, 25, 30, 31, 32, 33, 40, 45, 48, 51, 52, 53, 54, 55, 56, 58, 60, 62, 63, 64, 66, 67,76, 84, 85, 90 and 97 of List I to List II or some of them to List III. The main object of these proposals is to curtail the powers of the Union, and increase those of the States. The focus of the criticism is on those Entries of List I which enable the Union to control or take over the field of certain Entries in List II. (These have been set out in paragraphs 2.7.05). The broad argument is that these Entries are anti-federal. The proposed changes would not only restrict the scope of these Entries but completely delink them from the provisions of List II and List III and thus disable the Union in the exercise of its legislative power under these Entries from taking over any part of the State or the Concurrent field. In short, the purpose of these proposed changes is to make the three lists, in terms, mutually exclusive. However, in the case of Entry 56 of List I, the proposal is in reverse. It seeks to enlarge its scope so as to give the Union power to divert by law waters of any inter-State river to any part of the territory of India.

2.8.06 Another State Government has sought large-scale changes in List I, in many cases similar to the changes mentioned in the preceding paragraph. However, as regards Entry 56, List I, it has sought deletion of this Entry.

9. *ANALYSIS OF THE UNION LIST*

Principles of Ancillary Powers guiding criterion for analysis

2.9.01 The Constitutions of older federations specify only a few broad heads of legislation leaving it to the courts to fill the gaps and details through a process of liberal interpretation, deduction and adaptation to meet the exigencies of particular cases. The Constitution of the United States of America enumerates the powers of the National Government under 17 broad heads only. Among those heads are 'defence' 'coinage', 'commerce'. The Supreme Court of the United States of America, over the years, by a liberal interpretation, has expanded these heads of power to cover a variety of legislative fields. As aids to interpretation, the American Courts have evolved several principles, including the doctrine of "incidental and ancilliary powers".[23] Because of the comprehensive nature of the enumeration of subjects in the three Lists of our Constitution, those American doctrines do not have full and free application in India.[24] This, however, does not mean that the Entries in the three Lists of our Constitution are to be interpreted in a narrow, pedantic sense. It is an accepted principle that the legislative heads in these Lists should be generously interpreted and given the widest scope, and "each general word should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended in it".[25] The test for the application of this doctrine is, whether the power claimed can be reasonably comprehended within the Constitutional power expressly granted. However, this doctrine cannot be extended to include something which is specifically provided in another Entry relating to that subject. Nevertheless, it can serve as a useful criterion for analysis and classification of many Entries in List I.

2.9.02 Defence, Foreign Affairs, Communication and Currency are matters which are patently of special significance for the nation as a whole. They constitute a class by them-selves. For the first stage of analysis, the question to be addressed is: If only the four subjects *viz.*, Defence, Foreign Relations (Affairs) Communication and Currency were mentioned in List I, how many other related items in the List would be subsumed under these heads as necessarily incidental, or ancillary thereto? Keeping this criterion in view, we have attempted to classify the items in List I into four groups under these four heads. It is not claimed that this grouping is perfect. Some Entries may fall in more than one group. However, this would suffice for the limited purpose of identifying the total number of entries in List I which could reasonably be comprehended within these four main heads of legislation.

2.9.03 On the principle of incidental and ancillary powers, items of this kind in List I which can be grouped under these four categorical heads, are as follows:

Class I—Matters patently of National Concern

A Defence: This main subject would cover these items:

(i) 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. (Entry I).

(ii) Naval, Military and Air Forces; any other armed forces of the Union. (Entry 2)

(iii) Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment. (Entry 2A)

(iv) 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. (Entry 3)

(v) Naval, military and air force works. (Entry 4)

(vi) Arms, firearms, ammunition and explosives. (Entry 5)

(vii) Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. (Entry 7)

(viii) Atomic energy and mineral resources necessary for its production. (Entry 6)

(ix) Preventive detention for reasons connected with defence, Foreign Affairs or the security of India; persons subjected to such detention. (Entry 9)

(x) Central Bureau of Intelligence and Investigation (Entry 8)

(xi) Admiralty jurisdiction (Part of Entry 95).

(xii) War and Peace. (Entry 15).

(Total Entries : 12*)*

B. foreign Affairs:

This main subject, "Foreign Affairs", is wide enough to encompass these items:

(i) Foreign affairs; all matters which bring the Union into relation with any foreign country. (Entry 10).

(ii) Diplomatic, consular and trade representation. (Entry 11).

(iii) United Nations Organisation. (Entry 12).

(iv) Participation in international conferences, associa-tions and other bodies and implementing of decisions made thereat. (Entry 13).

(v) Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries. (Entry 14).

(vi) Foreign jurisdiction. (Entry 16).

(vii) Citizenship, naturalisation and aliens. (Entry 17).

(viii) Extradition. (Entry 18).

(ix) Admission into, and emigration and expulsion from, India; passports and visas. (Entry 19).

(x) Pilgrimages to places out side India. (Entry 20).

(xi) 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. (Entry 21).

(xii) Port quarantine, including hospitals connected therewith; seamen's and marine hospitals. (Entry 28).

(xiii) Foreign loans. (Entry 37).

(xiv) Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers. (Entry 41).

(xv) Establishment of standards of quality for goods to be exported out of India or transported from one State to another. (Entry 51).

(xvi) Fishing and fisheries beyond territorial waters. (Entry 57).

(*Total Entries :* 16)

C. Communications:

This generic head, "Communications", would carry in its sweep the following items:

(i) Railways (Entry 22).

(ii) Highways declared by or under law made by Parliament to be national highways. (Entry 23).

(iii) Shipping and navigation on inland water-ways, declared by Parliament by law to be national water-ways, as regards mechanically propelled vessels; the rule of the road on such waterways. (Entry 24).

(iv) 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. (Entry 25).

(v) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft. (Entry 26).

(vi) Ports 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. (Entry 27).

(vii) 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. (Entry 29).

(viii) Carriage of passengers and goods by railway, sea or air, or by national water-ways in mechanically propelled vessels. (Entry 30).

(ix) Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication. (Entry 31).

(*Total Entries :* 9)

D. Currency:

The main subject "Currency" would take in the following matters:

(i) Public debt of the Union. (Entry 35).

(ii) Currency, coinage and legal tender; foreign exchange. (Entry 36).

(iii) Reserve Bank of India. (Entry 38).

(iv) Post Office Savings Bank. (Entry 39).

(v) Banking. (Entry 45).

(vi) Bills of exchange, cheques, promissory notes and other like instruments. (Entry 46).

(*Total Entries :* 6)

Thus, the classes of subjects: Defence, Foreign Affairs, Communications and Currency would encompass as many as 43 Entries in List I.

Class II—Matters vital for the Union and its Functioning[26]

2.9.04 In every dual system based on separation of responsibilities there are certain legislative matters which are inherently essential for the distinct existence of the National entity and the effective exercise of its governmental functions. They are, so to say, integral to the Union organisation, its agencies and functions. From their very nature, therefore, such matters cannot but be the exclusive concern of the Union. Matters in List I belonging to this Class are:

(i) Property of the Union and the revenue there from but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides. (Entry 32).

(ii) Courts of wards for the estates of Rulers of Indian States. (Entry 34).

(iii) Lotteries organised by the Government of India or the Government of a State. (Entry 40).

(iv) Industrial disputes concerning Union employees. (Entry 61)

(v) Union Public Services: All India Services: Union Public Service Commission. (Entry 70).

(vi) Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India. (Entry 71).

(vii) Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission. (Entry 72).

(viii) Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People. (Entry 73).

(ix) 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. (Entry 74).

(x) 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. (Entry 75)

(xi) Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein, persons entitled to practice before the Supreme Court. (Entry 77).

(xii) Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts. (Entry 78).

(xiii) Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory. (Entry 79).

(xiv) Audit of the accounts of the Union and of the States. (Entry 76).

(xv) Inquiries, surveys and statistics for the purpose of any of the matters in this List. (Entry 94).

(*Total Entries :* 15)

Class III—Matters having National Dimensions

2.9.05 Activities relating to many matters in List I have national dimensions and implications. Some of them have even international ramifications. For effective administration of such matters, an integrated policy uniformly applicable throughout the country is essential. These are:

(i) Inter-State trade and commerce. (Entry 42).

(ii) Incorporation regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities. (Entry 44).

(iii) Establishment of standards of weight and measure. (Entry 50).

(iv) Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. (Entry 66).

(v) Inter-State Migration; inter-State quarantine. (Entry 81).

(vi) The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological Organisations. (Entry 68).

(vii) Census. (Entry 69).

(viii) Insurance. (Entry 47).

(ix) Stock exchanges and futures markets. (Entry 48).

(x) Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies. (Entry 43).

(xi) Patents, inventions and designs; copyright; trade-marks and merchandise marks. (Entry 49).

(xii) Cultivation, manufacture, and sale for export of opium. (Entry 59).

(*Total Entries :* 12)

Class IV—Tax Matters

2.9.06 The Union List includes 13 specific tax-items. These are in Entries 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 92A and 92B. Residuary non-descript taxes are covered by Entry 97. Taxation items are separately mentioned from general legislative heads in the Union List and the State List. There are no tax-items in the Concurrent List.

2.9.07 The allocation of fields of taxation between the Union and the States is designed to promote maximum possible efficiency in tax administration without impairing the economic unity of the nation. In distributing the taxation powers, the Constitution endeavours to take care of both aspects of this basic principle. Most of the major taxes figuring in the Union List, such as, customs duties, Union excise duties, Corporation Tax and Income-Tax, can, by their very nature, be effectively administered by the Union. Broad uniformity in the charging principles and incidence of these taxes is essential for preserving the economic integrity of the country. The Constitution seeks to ensure this by putting them in the Union List.

2.9.08 The core of the constitutional scheme which governs Union-State financial relations is contained in Articles 268 to 281. The outline of this scheme is that stamp duties and excise duties mentioned in Article 268 and Entries 84 and 91 of List I are levied by the Union but collected and appropriated by the States. Duties and taxes mentioned in clauses (a) to (h) of Article 269(1) referable to Entries 87, 88,89,90,92,92A and 92B, are levied and collected by the Union but assigned to the States. Income-tax

(Entry 82, List I) is compulsorily shareable with the States. At present, the bulk of income-tax proceeds are being distributed among the States on the recommendations of the Finance Commission. Union duties

of excise other than excise on medicinal and toilet preprations, mentioned in Entry 84, List I are optionally shareable with the States. The proceeds of these duties to the extent of 45% are being distributed among the States. Duties of customs (Entry 83) have an interface with foreign trade, which involves movement of goods across the international borders.

2.9.09 It will be seen that the proceeds of some of the taxes under these 13 Entries in List I, do not form part of the Union fisc. Many of them, though levied by the Union are distributed among the States. One of the objects of making the Union the larger tax collector and distributor of revenues to the States, is to enable the Union to reduce economic disparities and regional imbalances through equitable distribution of resources among the States. Through tax-sharing and grants, the constitutional scheme further seeks to maintain a proper balance between the tax revenues and the governmental responsbilities of the Union and the States. Transfer of tax-revenues by the Union to the States is made on the recommendations of the Finance Commission. The issues raised by some State Governments with respect to certain specific tax-items or financial provisions have been dealt with in the Chapter on “Financial Relations”. It will suffice to say here that, *prima facie*, there appear to be good reasons for including these tax-items in the Union List.

2.9.10 The above analysis of matters in List I leads to the following conclusions:

(i) Forty-three Entires therin are necessarily incidential or ancillary to the four subjects, viz., Defence, Foreign Affairs, Currency and Communications, which are indisputably matters of national concern.

(ii) Fifteen Entries comprise matters which are integral to or essential for the effective functioning of the Union and its organisation.

(iii) Twelve Entreis are in respect of matters which are predominantly of national significance. They have national dimensions and implications. They can be best handled at the national level.

(iv) Thirteen Entries related to fields of taxation. Proceeds of a number of these taxes are transferred by the Union to the States by way of tax-sharing or grants.

2.9.11 In the light of the above analysis we now proceed to consider the structural and functional changes proposed with respect to the Union List.

2.9.12 We would first consider the extreme demand in a draft resolution as noted at Para 2.4.04 'that the interference of the Union should be restricted to Defence, Foreign Relations, Currency and General Communications; and all other powers should vest in the States. Further, that for the expenditure incurred by the Union in respect of the above subjects, the States would contribute in proportion to their representation in Parliament'.

2.9.13 Taking the demand *ex-facie*, without any addition or subtraction, it means that only these four subjects should remain in the Union List and all other items including heads of taxation, should be excluded from this List and assigned to the States. As demonstrated in paragraphs 2.9.03 these four 'subjects' if interpreted in their widest amplitude on the principle of implied and ancillary powers will not include any taxation items. This being so, we are of the view that under such arrangements the country cannot survive as one integrated nation. Nowhere in the world today, exists a Union or a federation in which the National Government has no fiscal resources of its own, independent of the constituent units.

2.9.14 Moreover, the proposed redistribution of powers would require drastic changes in the basic scheme and Frame work of the Constitution “so sedulously designed to protect the independence and ensure the unity and integrity of the country”. This is an implication which under our Terms of Reference, we are imperatively required not to disregard. Making of such wholesale structural changes in the fundamental fabric of the Constitution may even be beyond the scope of Article 386.

2.9.15 For these reasons, we are unable to support the extreme demand that the jurisdiction of the Union should be limited to four subjects only and that it should have no powers of taxation, but subsist on contributions from the States.

10. *ISSUES RELATING TO LIST I*

2.10.01 One State Government has suggested a large number of modifications in the Union List. This will entail drastic reduction in the legislative sphere of Parliament and, in most cases, a corresponding

increase in the ambit of the legislative field of the States. Before commencing examination of these suggestions, it is necessary to recapitulate that the Union List enumerates matters of exclusive or dominant national interest, whereas the scope of the State List is restricted to areas of purely local concern.

2.10.02 We have, in paragraphs 2.9.02 and 2.9.03 above, tried to group the various Entries in List I, *inter alia*, under the broad heads of Defence, Foreign Affairs, Communication and Currency. We have noted there that an Entry or a part thereof may relate to more than one of these heads. It is nobody's case that Defence, Foreign Affairs, Communications and Currency are not matters of national concern. Many of the suggestions relate to deletion of portions of certain Entries, which, incidentally or by necessary implication, could fall within these four heads. In this connection, we have to keep in view the objective sought to be subserved by an Entry in question and the likely impact on it of the modification suggested. Any suggestion which would detract from or impede the achievement of the objective, would not be in the interests of the nation. The possible impact of the suggestion on other important matters of national concern has also to be considered. We have not been supplied by the State Governments with particulars of actual hardship, if any to the State arising out of the operation of any Entry in question. In the absence of the same the suggestions have to be dealt with purely on a theoretical plans.

2.10.03 The first set of the entries in question consists of Entry 2A of List I and Entries 1 and 2 of List II. These Entries now read as under:—

2.10.04 **Entry 2A, List I—**"Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any States in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment."

2.10.05 **Entry 1, List II—**"Public Order but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power."

2.10.06 **Entry 2, List II—**"Police (including railway and village police) subject to the provisions of Entry 2A of List I."

2.10.07 **Entry 2A of List I and Article 257A** [27] were introduced in the Constitution by the Forty-second Amendment. Prior to this amendment Entry 1 of List II only excluded ''the use of naval, military or air forces or any other armed force of the Union in aid of the civil power" from its purview, while Entry 2 of List II was not subject to any Entry in List I. The latter Entry read: "Police, including railway and village police". The Forty-second Amendment extended the scope of the exclusionary clause of "any other force subject to the control of the Union or of any contingent or unit thereof" and made Entry 2 subject to the provisions of Entry 2A of List I.

2.10.08 Article 257A was repealed by the Forty-fourth Amendment, but Entry 2A of List I and Entries 1 and 2 of List II were left untouched.

2.10.09 Two State Governments have each proposed a set of modifications of the aforesaid Entries. The suggestion of one of them is that in Entry 2A of List I, the words "or any other armed force of the Union or of any other force subject to the control of the Union" in Entry 1 of List II, and the words "subject to the provisions of Entry 2A of List I" in Entry 2 of List II, be deleted. In support of this demand, it is contended that "Entry 2A was actually introduced by the Constitution (Forty-second Amendment) Act, 1976 in order to confer on the Union Government power to control the armed forces of the Union, such as, BSF, CRP etc., when they are deployed in any State on the request of a State Government in aid of the civil power in such State". It is claimed that "the State Governments have the right to requisition Central Reserve Police Force when they have reasons to believe that the State Police Forces will require to be adequately supplemented to deal with likely situations of serious disturbances. It is only the State Government who may call for the Central Reserve Police for the purpose of preserving public order and protecting property and of quelling disturbances".

2.10.10 According to the other State Government, Entry 2 of List I does not mention any forces of the Union other than the armed forces, including the Naval, military and air forces. Prior to the insertion of Entry 2A in this List, therefore, the Union would create and maintain only genuine paramilitary forces and defence intelligence establishments to aid the armed forces in the defence of the country. However, the

Union created a number of forces like the Central Reserve Police Force, the Border Security Force etc. which were mainly of the nature of police forces and had largely a police rather than a paramilitary role. This was an encroachment by the Union on the fields of "public order" and "police", both of which were the responsibility of the States under Entries 1 and 2 of List II. According to the State Government, the encroachment was sought to be legitimised by inserting Entry 2A in List I which, for the first time, made a mention of "any other force subject to the control of the Union".

2.10.11 The State Government has further argued that *suo motu* deployment by the Union of its armed forces cannot be reconciled with the expression "in aid of the civil power" occurring in Entry 2A of List I. Deployment of such forces in a State, if it is to be an "aid", cannot be forced on a State administration but must be at its request or with its concurrence.

2.10.12 The State Government has, therefore, suggested the following amendments:—

(i) The first part of Entry 2A in List I, *viz.*, "Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power", may be followed by the words "at the request or with the concurrence of that State".

(ii) The second part of Entry 2A of List I, *viz.*, "powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment", may be replaced by the words "determination of terms and conditions of such deployment applicable to all States with the concurrence of the Inter-State Council". This will ensure that the terms and conditions will be the same for all the States.

(iii) Entry 1 of List II should read: "Public order subject to Entry 2A of List I".

2.10.13 This State Government does not agree with the view of the Administrative Reforms Commission that, by virtue of Article 355, the Union is competent to use its armed police forces in aid of the civil power in a State, even *suo motu.* According to the State Government, Article 355 is, at best, a sort of preamble to Article 356. It does not confer any powers and responsibilities on the Union other than those implied in other Articles. The powers and responsibilities of the Union *vis-a-vis* the States will not be any less if Article 355 is omitted. (In fact, Article 355 could be omitted). However, if it is retained, it may be amended so as to replace the expression "internal disturbance" by the expression "serious and prolonged breakdown of public order". The State Government is of the view that a serious and prolonged breakdown of public order in a State is a valid justification for invoking Article 356 on the ground that a situation of failure of the constitutional machinery in the State has arisen.

2.10.14 The suggestions of the first State Government appear to rest on the twin assumptions that (a) the Union can deploy its forces in a State, only on the request of the State Government, and (b) the State Government has a right to requisition Union armed forces and to use them under its control to quell public disorder.

2.10.15 The second State Government has interpreted Article 355 and Entry 2A of List I to mean that the Union Government cannot, in any circumstances, deploy its armed forces in a State in aid of the civil power *suo motu.* A necessary pre-condition for such deployment is a request from the State Government or its concurrence. If, in a situation which obviously calls for intervention by the Union in aid of the civil power, a popularly elected Government of a State fails to make a request or give its concurrence to such intervention, the President may legitimately take over the Government of the State under Article 356 on the plea of complete breakdown of law and order and clear the way for intervention at the request or concurrence or the Governor's administration. Also, according to the State Government, the Central Reserve Police Force, the Border Security Force, etc. are not "armed forces" but come under the expression "any other force subject to the control of the Union" occurring in Entry 2A of List I. Further, in suggesting an amendment to the second part of Entry 2A of List I, the State Government apparently does not consider it necessary that the Union should lay down the powers, jurisdiction etc. of its forces, armed or otherwise, while on deployment in a State in aid of the civil power. It need determine only the terms and conditions of such deployment with the concurrence of the Inter-State Council. These should be uniform for all the States.

2.10.16 As noticed in paragraph 2.10.07, even before the Forty-second Amendment, maintenance of public order which required the use of the armed forces of the Union in aid of civil power of the State, had

been expressly excluded from the ambit of Entry 1, List II. The question is whether, what stands expressly excluded from the purview of Entry 1, List II, was (before the Forty-second Amendment) within the exclusive competence of the Union. For this purpose, it is necessary to have a look at the relevant provisions. The subject-matter to Entry 2, List I is: “Naval, military and air forces; any other armed forces of the Union”. Entry 2, List II deals with “Police”, (The Forty-second Amendment made it expressly subject to Entry 2A of List I). Entry 1(Criminal Law) of List III expressly excludes the use of the armed forces of the Union in aid of civil power from its purview. Entry 2 of List III comprises: “Criminal procedure, including all matters included in the code of Criminal Procedure at the commencement of this Constitution”. “The civil power” in the context of Entry 1, List II and Entry 1, List III “Criminal Law"—obviously refers to the civil authorities of the State Government charged with the responsibility of maintaining public order.

2.10.17 It is well-settled that the entries in the legislative lists should be given the widest scope and the main topic of an Entry is to be interpreted as comprehending all matters which are necessary, incidental or ancillary to the exercise of power under it. By this token the use of the armed forces of the Union in aid of the civil power in a State, is a matter which is necessarily incidental or subsidiary to the express subject-matter of Entry 2 of List I. Entry 2, List I—before the insertion of Entry 2A in that List— could be construed as conferring exclusive power on Parliament to make laws with respect to the use of any armed force of the Union in aid of civil power. In view of Article 73, the executive power of the Union would also extend to this matter.

2.10.18 Thus, even before the Forty-second Amendment, the Union had the power to deploy its armed forces in aid of the civil power for the purpose of maintaining public order or quelling an internal disturbance. Insertion of Entry 2A in List I by the Forty-second Amendment not only made explicit what was earlier implicit in Entry 2 of List I but further enlarged its scope by adding the words “any other force subject to the control of the union.....in aid of the civil power”. The words “any other force” in this Entry refer to a force other than an armed force, but which is subject to the control of the Union. Such a force of the Union may be deployed to aid the civil power of a State whose even tempo of life is disrupted due to some wide-spread natural calamity such as cyclone, earthquake, floods etc. In case of such an internal disturbance, the Union may send its force of technical experts (which may not be integral to its armed forces) to aid the civil power of the State to meet the situation.

2.10.19 The expression “in aid of the civil power” used in Entry 2A is not necessary to be read as meaning that the Union can deploy its armed forces in a State only at the request of the State Government. It may happen that the State authorities responsible for maintenance of law and order are unable or unwilling to deal with a serious disturbance of public order, and the State Government fails or refuses to seek the aid of the Union armed forces for suppressing it. It does not mean that in such a grave situation, the Union is expected to remain an idle spectator. It has a duty to intervene and power to deploy *suo motu* its armed forces if, in its opinion the public disorder in the State has assumed the magnitude and character of an ‘internal disturbance’ within the contemplation of Article 355.

2.10.20 Article 355 casts a duty on the Union to protect every State *inter alia* against internal disturbance. It refers to three kinds of situations. One is that of 'external aggression', the other is of 'internal disturbance' and the third is a situation of 'breakdown of the constitutional machinery'. These situations, may either arise singly or in combination with one another. If an internal disturbance does not involve a failure of the constitutional machinery in the State, no action can be taken simply on this ground under Article 356. Article 355 does not expressly say about the acts which the Union may do or the means which the Union may employ to quell an internal disturbance, simpliciter. However, it is a firmly established rule that “where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as are essentially necessary to its execution"[28]. In the light of this fundamental principle Article 355 not only imposes a duty on the Union to protect a State against external aggression and internal disturbance but also, by inevitable implication, grants to the Union the power of doing all such acts and using all reasonable means as may be essential for the effective performance of that duty.

2.10.21 Of course, in exercise of the power available by necessary implication, the Union cannot assume to itself the responsibilities exclusively assigned to the States by virtue of Entries 1 and 2 of the State list. In other words, unless National Emergency is proclaimed under Article 352 or powers of the State Government are assumed under Article 356, the Union Government cannot assume responsibility for

maintenance of public order in a State to the exclusion of the State authorities charged with the maintenance of law and order. The use of the expression “aid” in Entry 2A indicates that the Union armed forces can be deployed to help and supplement the efforts of the State police and magistracy in quelling the disturbance and restoring order. The Union armed forces and the State authorities concerned have to act in concert for this purpose. Union's overriding power to ensure such coordination to put down an internal disturbance in a State is also impliedly relatable to Article 355. If the State Government or its authorities, dispite informal requests or warnings, do not cooperate or they impede the exercise of the power of the Union in dealing with the internal disturbance, a formal direction under Article 257 can be issued. This is, however, a last resort power. Since non-compliance with such a direction may attract the sanction in Article 365 and further entail action under Article 356, even a fore-warning about the issue of such a formal direction will, in most cases, be enough to secure the necessary co-operation of the State authorities.

2.10.22 The contention of one of the State Governments that it has got a right to requisition the armed forces of the Union for the purpose of preserving public order, appears to be misconceived. Though it has not referred to the provisions contained in Sections 130, 131 and 132 of the Code of Criminal Procedure, 1973, yet in making this claim it possibly had these provisions in mind.

2.10.23 Section 130 of the Code lays down that if any unlawful assembly cannot be otherwise dispersed and it is necessary for the public security that it should be dispersed the Executive Magistrate of the highest rank who is present, may cause it to be dispersed by the armed forces. Such Magistrate may require any officer of the armed forces to disperse the assembly with the help of the armed force under his command and to arrest and confine members of the unlawful assembly. “Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit .....” *vide* Section 130(3). Before the Forty-second Amendment, matters contained in Section 130, 131 and 132 could be related to Entry 2 of the Union list and Entry 2 of the Concurrent list. After the Forty-second Amendment, such use of the armed forces of the Union would fall not only under Entry 2, List I and Entry 2, List III but also come within the purview of Entry 2A of List I. Thus, there is an overlapping area as between Entries 2 and 2A of List I and Entry 2 of List III with respect to matters contained in Sections 130, 131 and 132 of the Code of Criminal Procedure. In view of the principle of legislative paramountcy of the Union embodied in Articles 246 and 254(1), there is little scope for the exercise of the legislative power of the State Legislatures under Entry 2 of the Concurrent List with respect to the matters comprised in Section 130, 131 and 132 of the Code of Criminal Producedure.

2.10.24 A perusal of the provisions of Sections 130, 131 and 132 of the Code would show that they do not confer any direct right on the State Government to requisition the armed forces of the Union. Of course, there is nothing in the Constitution or the Code of Criminal Procedure which debars a State Government from requesting the Union Government for making available the aid of its armed forces for suppressing public disorder. But that does not mean that the State Governments have an indefeasible right to ask for the aid of the armed forces of the Union, whenever they like. In a situation of public disorder, not amounting to internal disturbance, the Union Government has a discretion to accept or decline the request of the State Government for such aid.

2.10.25 The Central Reserve Police Force, the Border Security Force, the Central Industrial Security Force etc. were constituted by Parliamentary enactments as “armed forces”. It would be incorrect to categorise them as “any other force subject to the control of the Union” in terms of Entry 2A of List I.

2.10.26 The suggestion that the expression"powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment”, occurring in Entry 2A of List I should be replaced by the words “determination of terms and conditions of such deployment applicable to all States with concurrence of the Inter-State Council” has been examined in Section 8 of Chapter VII on “Deployment of Union armed forces in a State for public order duties”. As pointed out there, the proposed amendment of Entry 2A of List I will create an operational vaccum. Also, it will needlessly burden the Inter-State Council with a comparatively routine administrative task of concurring in the terms and conditions of deployment of Union forces in a State.

2. 10.27 In the light of the foregoing discussion, it is not possible to support the demands of the two State Governments for deletion and modification of entry 2A of List I and Entries 1 and 2 of List II.

2.10.28 **Entry 7, List I**—Entry 7 of List I relates to “Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war”.

It has been suggested that this should be modified as “Industries necessary for the purpose of armament”. Entry 7, as it exists, contains a very important safeguard, namely, Parliament has to declare by law that the industry is necessary for the purpose of defence or for the prosecution of war. The amendment suggested would do away with this safeguard. Further, the scope of the expression 'armament' is highly restricted. Armament is only one of the several aspects of defence prosecution of war'. The proposed modification, if accepted, would seriously cripple the capacity of the Union for effective discharge of its responsibilities with respect to defence or prosecution of war. New concepts in defence and in the prosecution of war are all the time being thrown up. It is a dynamic situation. An industry which is considered essential today for defence or war, may not be so regarded tomorrow and *vice-versa.* We are, therefore, of the view that it would not be in the national interest to modify the existing Entry as suggested.

2.10.29 **Entry 24, List I**—“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”.

One State Government seeks to restrict Union's jurisdiction only to shipping and navigation on inter-State rivers. Another State Government has argued that “this Entry is widely worded and may take in shipping and navigation on inland waterways of rivers which are completely within a particular State. Shipping and navigation on inland waterways of inter-State rivers completely belong to the States over which the Union Government or Union Parliament should not have much power to intervene”.

Means of communication are the lifeline of the nation. Important inland waterways, which are declared to be national waterways form part of the national communication network and are vital for the nation. Significantly, the Constituion has conferred powers on the Union to give directions to the States in regard to maintenance of means of communication of national or military importance (Article 257). Inland waterways of national importance may be inter-State rivers as also others. All inter-State rivers may not be of national importance from the point of view of communications. Further, the mere fact that a particular inland waterway happens to be entirely within a State does not in any way detract from its national or military importance. Inland waterways are often useful for purposes of defence. It is pertinent to note that the scope of existing Entry is limited by the words “as regards mechanically propelled vessels”. This is so becasue of the complex problems associated with development, maintenance and regulation in waterways used by mechanically propelled vessels. We are, therefore, of the view that no amendment of Entry 24 is called for.

2.10.30 **Entry 25, List I**—“Maritime shipping and navigation, including shipping and navigation on tidal waters, provision of education and training for the mercantile marine and the regulation of such eduction and training provided by States and other agencies”. It has been suggested that the expression, ‘‘Provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies’’ should be deleted and transferred to the Concurrent List. Maritime shipping and navigation, including shipping and navigation on tidal waters, is essentially matter falling under the broad head, “Communications” and is admittedly a matter of national concern. It is also of great significance for defence. “Maritime shipping and navigation, including shipping and navigation in tidal waters” is proposed by the State Government to be left in the union list, obviously because it is of national importance. Provision of education and training and regulation of such education and training provided by States and other agencies is closely connected with and ancillary to the main topic of the Entry and therefore is a matter of national concern. The only effect of transferring this part of entry 25 to the Concurrent List would be to extend the legislative competence in regard to regulation of such education and training to the States, also. The transferred position will not be materially different from even now, this Entry 25 saves the powers of the State to provide such education and training. ‘Regulation’ of such education and training imparted by the states and other agencies has been included in List I, obviously to enable the Union to ensure uniformity of syllabi and standards. This is also in conformity with entry 66 of List I which enables the Union to determine and coordinate standards of technical education. We cannot, therefore, support the demand for modification of Entry 25 of List I.

2.10.31 **Entry 30, List I**—"Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels".

It has been suggested by two State Governments that the scope of the later part of this entry may be limited to inter-State rivers, in line with the suggestions for modification of entry 24, List I. Clearly, there is a misapprehension that the responsibility of the Union is restricted to inter-State rivers and not what may be considered "national waterways". We have dealt with this aspect under entry 24, above. For the reasons stated therein, we do not agree that the scope of the later part of this entry should be modified and restricted to inter-State rivers as against national waterways.

2.10.32 **Entry 31, List I**—It relates to "Posts and Telegraphs: telephones, wireless, broadcasting, and other like forms of communication".

It has been suggested by one State Government that Broadcasting and Television should be transferred to the State List. Another State Government has suggested that these matters should be transferred to the Concurrent List.

2.10.33 There are various facets of Broadcasting. These powerful media, *inter alia*, have a vital role in national integration, education and socio-economic development of the country. Establishment and working of this media involve large investments and complex technological requirements. 'Broadcasting' includes not only 'Radio and Television' but also other forms of wireless communication. The criticism of most of the States is mainly directed against the functional and not against the structural aspect of this Entry. Their main grievance is about lack of access to these media, which is an entirely different issue. We have considered these complaints and suggestions in detail in the Chapter on "Mass media"[29]. Suffice it to say here, the Broadcasting and Television are a part of the Broad head of 'Communications' which are universally recognised as matters of national concern. These media have even inter-national dimensions.

One State Government has pointed out that while in the past the telephone facilities were departmentally run, now the Mahanagar Telephone Nigam, an autonomous body has been set up for the management and development of these facilities in Bombay and Delhi. It is argued that, in line with this trend, autonomous bodies set up by the Union are made responsible for telephone facilities in metropolitan towns while in other towns and rural areas similar autonomous bodies set up by States may be made responsible. It has proposed that for this purpose telephones may be shifted from List I to List III.

Telephones are a very important means of communication. Stretching over the length and breadth of the country, they help to bind the nation together. They are vital for practically every facet of the nation's life e.g. in trade and commerce. These facilities require large investments. Technological advances are taking place all the time in this field. For this successful operation of these facilities, they lean on other facilities like satellites which are with the Union. Establishment of autonomous bodies at important centres is only an administrative arrangement decided upon by the Union for the more efficient discharge of its functions. But such an action cannot be made the basis for a plea to transfer part of the subject to the Concurrent List.

It is in the larger interests of the nation that this important means of communication remains within the exclusive jurisdiction of the Union so that the entire system develops as an integrated, sophisticated and modern facility.

2.10.34 **Entry 32, List I**—"Property of the Union and the revenue, therefrom, but as regards property, situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides".

It has been suggested that the saving clause at the end, *viz.*, ''save in so far as Parliament by law otherwise provides'' is unnecessary and should be deleted, because ''Article 285 itself provides for such powers''.

2.10.35 Article 285(1) provides for exemption of all Union property from taxes levied by a State or by any authority within a State. We have dealt with the issues relating to Articles 285 and 289 in a subsequent part of the Chapter[30] and have concluded that no structural change in these provisions is called for. It will be sufficient to say here that the exception carved out by the saving clause of Entry 32 in question is in conformity with the basic scheme of inter-governmental tax immunities provided in Articles 285 and 289. If this saving clause is deleted from Entry 32, as suggested, the entry will become incompatible with Article 285. We are, therefore, unable to support the suggestion for modification of entry 32.

2.10.36 **Entry 33, List I**—The Constitution (Seventh Amendment) Act, 1956 deleted this entry as also entry 36 in List II and modified entry 42 in List III to read “Acquisition and requisitioning of property”.

2.10.37 The suggestion of a State Government is that the pre-1956 position should be restored. An Entry “Acquistion and requisitioning of property for the purposes of the Union"should be inserted in List I and a new Entry 36 inserted in List II which will read “Acquisition and requisitioning of all property other than for the purposes of the Union”. Entry 42 in List III, it is suggested, should be omitted. The State Government has not pointed out any difficulty that they might be facing on account of the present entry 42 being in the Concurrent List.

2.10.38 Prior to the Seventh Amendment, both Entry 33 of List I and Entry 36 of List II provided for acquisition and requisitioning of property, the former for the purpose of the Union and the latter for purposes other than those of the Union, subject, however, to the provisions of entry 42 of List III. The last named Entry provided for “Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given”.

2.10.39 Such trifurcation of the subject led to several difficulties. Questions arose as to whether a State Government could acquire or requisition property for a “Union purpose”. It was held by the Supreme Court, in *State of Bombay* V. *Ali Gulshan*[31] that a State was not competent to requisition or acquire property under the Bombay Land Requisition Act, 1948, for the accommodation of the staff of a foreign consulate, because that was a 'Union purpose' and not a purpose of the State.

2.10.40 It was to get over these problems that the Seventh Amendment was enacted. According to the Statement of Objects and Reasons of the Amendment, the changes were made to obviate technical difficulties and to simplify the constitutional position. As a result of the amendment, the entire field of acquisition and requisitioning of property is available for the exercise of concurrent legislative power by the Union and the States. An objection that the State or the Union cannot acquire or requisition property for each other's public purpose, is no longer tenable. Further, it is no longer necessary to delegate, under Article 258(1) to a State Government, the executive power to acquire or requisition property for a purpose of the Union.

2.10.41 Thus the existing arrangement is more flexible in that a State Government is competent to acquire or requisition property for a “Union purpose” and *vice versa.* It is not clear what advantage would accrue on account of the change proposed by the State Government. Rather, it might lead to friction. In fact, if the pre-Amendment position were to be reverted to, operation of the restored Entries would recreate the same difficulties to obviate which the Amendment was made. In view of the many advantages which have been secured by having a single Entry *viz.* Entry 42 in List III, we are unable to support the suggestion for reverting to the pre-1956 situation.

2.10.42 **Entry 40, List I—**“Lotteries organised by the Government of India or the Government of a State”.

The proposal of three State Governments is that the words “or the Government of a State” be omitted from this Entry and the subject of 'lotteries organised by the Government of a State' should be transferred to the State List. One State-level political party has also recommended that this Entry should not apply to lotteries organised by the State.

2.10.43 Entry 40, List I should be read with Entry 34 of List II which comprises: “Betting and gambling”. There is a bead-roll of Court decisions[32] which have consistently held that the expression, “Betting and gambling” includes the conduct of lotteries. 'Lotterries organised by the Government of India or the Government of a State' has been taken out from the legislative field comprised in Entry 34, List II and reserved under Entry 40 of List I to be dealt with exclusively by Parliament. As a result, in view of Article 246(1) and (3), State Legislatures are not competent to make law touching lotteries organised by the Union or a State Government. But so long as Parliament does not legislate under Entry 40, List I, a State is competent under Entry 34, List II read with Article 298, to conduct a lottery. To the best of our information, at present, there is no legislation made by Parliament on the subject of lotteries under Entry 40, List I.

2.10.44 State Lotteries always assume inter-State dimensions. Distributors of lottery tickets and subscribers are scattered all over the country. A State organising a lottery is inherently incompetent to control or regulate its operations or implications beyond its territorial limits. A typical illustration of

such a difficulty is furnished by the Maharashtra case[33] which went up to the Supreme Court. By an executive order, the Union Government allowed the Government of Maharashtra and other State Governments to conduct lotteries 'for finding funds for financing their development plans'. At the same time, it advised that suitable steps be taken to safeguard the interests of such States as did not desire to start State lotteries. Armed with this "permission"—which had no legal sanction—the Government of Maharashtra imposed a ban on sale or distribution of lottery tickets of other States. Feeling aggrieved, some persons filed writ petitions in the Supreme Court challenging the validity of this ban. The Supreme Court held that since Parliament had not enacted any legislation under Entry 40, List I, the Government of Maharashtra was competent under Entry 34, List II read with Article 298 to organise its lottery. It had also the necessary executive power for that purpose. It was, therefore, not required to obtain the permission of the Union Government to organise its lotteries. Even assuming that such permission is necessary, a condition imposed by virtue of such permission that lottery tickets of one State may not be sold in another State, cannot be enforced by the other State. The other State has no power to make laws in regard to the lotteries organised by the first State. Its executive power, by virtue of Article 298, extends to lotteries organised by itself, but not to lotteries organised by the other State. If these conditions had been imposed by a law made by Parliament under Entry 40, List I, they would be legally enforceable throughout the area of its inter-State operation. Keeping the subject of 'regulation of lotteries' organised by the State Governments' in List I, enables Parliament to regulate this matter including its inter-State aspect, effectively.

For the foregoing reasons, we are not in favour of modifying Entry 40, List I and transferring any part thereof to List II.

2.10.45 **Entry 45, List I**—"Banking".

It has been suggested that this subject may be transferred to the Concurrent List.

2.10.46 "Banking" has been defined by Section 5(b) of the Banking Regulation Act, 1949 as "the accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise, and withdrawable by cheque, draft or otherwise". This definition is not exhaustive. Two important aspects to be considered in this connection are the territorial nexus of Banks and the close connection of Banking with currency and credit. Operations of the Banks are not confined to the territorial limits of the States in which they are located. Their banking activities have nation-wide implications. Banking business has an important impact on inter-State trade also. Currency and credit are vital for promoting socio-economic development of the country. The Constitution has allocated the field of Banking, exclusively to Parliament. The States have the power to borrow but this is subject to the control of the Union under certain circumstances (Article 293). In view of the fact that Banking plays a very important role in the organisation of credit, facilitation of inter-State trade and commerce, the growth of national economy and economic welfare of the nation as a whole, we are unable to support the demand for transfer of this Entry to the Concurrent List.

2.10.47 **Entry 48, List I**—"Stock exchanges and futures markets".

It has been contended that "futures markets" are essentially intra-State in character, dealing with local mercantile and commercial subjects, mostly of local and regional significance. On these premises, two State Governments have suggested that the subject 'futures markets' be transferred to the State List. One of them has further suggested that the corresponding part of Entry 90 of List I *viz.* "Taxes other than stamp duties on transactions in futures markets" be also shifted to the State List.

Commercial activities in "futures markets" involve 'forward contracts'. If there is too much speculation in the futures markets its impact spills over inter-State boundaries causing artificial fluctuation in prices and scarcity of commodities traded. It has a close connection with price control and regulation of the production, supply and distribution of commodities essential for the life of the community. From this standpoint, the problem is bigger than the individual States. In our country in the case of several essential commodities e.g. edible oils, wheat, rice, pulses, spices and sugar etc., the producing States are different from those where the bulk of them is consumed. For example, ground-nut is mainly produced in Gujarat, while the consumers of this commodity are spread throughout the country. Similarly, in production of wheat and rice, Punjab is surplus, while the North Eastern and Southern States are in deficit. To check this aspect of 'futures markets' having inter-State dimensions, Parliament has under this entry, enacted the

Forward Contracts (Regulation) Act, 1952 and the Securities Contracts (Regulation) Act, 1956. These legislations regulate forward trading in certain goods throughout the country.

The expression “futures makets” in Entry 48, List I does not mean the place or the locality where transactions of sale and purchase of goods takes place. If there was even any doubt about the connotation of this expression it has been unequivocally dispelled by a Constitution Bench of the Supreme Court with those observations: “The word 'futures means' contracts which consist of a promise to deliver specified qualities of some commodity at a specified future time ..... Futures are thus a form of security, analogous to a bond or promissory note.' In this sense a market can have preference only to business *and not any location”*[34]. On these premises, the court held that the Forward Contracts (Regulation) Act, 1952 was a legislation on 'futures markets' under Entry 48, List I. In the light of this authority, it is abundantly clear that 'futures markets' are commercial activities which are not purely or mainly of local or regional concern. They are essentially inter-State in character. No practical difficulty, disadvantage or hardship experienced in or resulting from the operation of this Entry or the Acts passed thereunder, has been brought to our notice.

As regards the proposal for deletion of the tax on transactions in 'futures markets' from Entry 90, List I and its transposition to List II, it may be observed that under Article 269(1)(e) it is mandatory for the Union to assign and distribute all such taxes among those States within which it was levied. The proceeds of this tax do not form part of the consolidated Fund of India except in so far as the proceeds represent the proceeds attributable to the Union Territory. The State are its sole beneficiaries. For the foregoing reasons, we are not persuaded to support the suggestion for transferring that part of Entries 48 and 90 of List I to List II, which relates to “futures markets”.

2.10.48 **Entry 51, List I**—“Establishment of standards of quality for goods to be exported out of India or transported from one State to another”.

It has been proposed that the phrase “or transported from one State to another” be deleted. The argument is that each State can independently judge for itself the quality of the goods it is purchasing from the other States and a decision to accept such transportation of goods exported by them has to be left to the discretion of the State concerned.

2.10.49 The Constitution envisages free flow of goods across State borders (Article 301), Parliament alone has the power to impose restrictions on inter-State trade (Article 302). One of the important achievements during the last three decades and more, is the emergence of the country as a single economic union. This has enabled the country to march faster towards industrialisation. Uniform standards throughout the country are a must for promotion of inter-State trade, also. Determination of standards as to the quality of goods are also essential for export. They help build international credit and goodwill for the country in foreign trade. The suggestion of the State Government would result in economic fragmentation of the commercial unity of the nation. We cannot, therefore, subscribe to the proposed modification of this Entry.

2.10.50 **Entry 52, List I**—“Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest”.

Most State Governments and political parties have not suggested any specific strucutral change in Entry 52 of List I. But, all of them complain that by enacting the Industries (Development and Regulation) Act, 1951 and amending it from time to time on the basis of declarations of public interest, the Union has indiscriminately taken over under its control most of the industries, with consequent denudation of the powers of the State Legislatures under Entry 24 of List II. They have suggested that the first Schedule to the IDR Act should be reviewed from time to time and those items, Union control over which is no longer expedient in the public interest, should be deleted therefrom. Some of them have given a list of specific items of industries which, they suggest, should be deleted from the first Schedule to the Act. One State Government after stating that 'the Union has tended to touch the State legislative field by invoking the powers available under Entires 52, 54 and 92 etc. in List I', has asked for a general review of the Entries in the three Lists. Only two State Governments have specifically demanded structural changes in Entry 52, List I and Entry 24, List II of the Seventh Schedule. One of them has suggested that Entry 24, List II should be reformulated so as to read: “Industries other than those specified in Entries 7 and 52 of List I”. It has further urged that Entry 52, List I be substituted by a new Entry, which by itself, will enumerate the “core

industries of crucial importance for national development" and that the words which enable Parliament to take over the field of Entry 24, List II by making a declaration of public interest, should be deleted. A list of such "Core industries" has been suggested for insertion in the new Entry 52. Another State Government has suggested that Entry 52 should be modified to limit Union's control to specified key, basic and strategic industries enumerated in the Entry itself. It has also given a list of such industries for incorporation in Entry 52. In short, the suggestion is that Entry 52, List I and Entry 24, List II should be so restructured as to become mutually exclusive and independent.

2.10.51 We have in a foregoing paragraph considered the proposal of the State Government for restructuring Entry 7, List I. We have dealt with, in detail, the issues and problems in the context of Union-State relations, concerning the various aspects of Entries 52 of List I and Entry 24 of List II in Chapter XII on "Industries". At this place, the focus of the discussion will primarily be on the demand for restructuring these Entries.

2.10.52 The Constitutional position is that when Parliament by law declares under Entry 52, List I that Union control over a particular industry is expedient in the public interest and passes a legislation pursuant to such declaration, such industry, to the extent laid down in the declaration, and the legislation, becomes the exclusive subject of legislation by Parliament, with corresponding denudation of the competence of the State Legislatures under Entry 24, List II. By making the requisite declaration under Entry 52, List I Parliament passed the Industries (Development and Regulation) Act, 1951. This Act has been amended several times in the same manner. The result is that the competence of the State Legislatures under Entry 24, List II with respect to a very large number of industries enumerated in the First Schedule of the IDR Act, has been taken away to the extent laid down in this Act.

2.10.53 There are three important objectives of National Industrial Policy which stem from the Directives enshrined in Articles 38 and 39 of the Constitution. One is to secure dispersal of industries in a manner which would held correct regional imbalance. The other is encouragement and protection of small-scale industries. The third is curbing of monopolies. Regulation and control at the national level of the establishment, growth and development of *certain* industries or some of their aspects, having a nation-wide significance, is necessary for ensuring progress towards the welfare goals of governmental policy envisioned by the Constitution. Identification of such industries of nation-wide significance and public interest, from those which are not of such interest, is essential for implementation of this policy.

2.10.54. Since socio-economic conditions are never constant, industries cannot be classified once-for-all into those which are of public interest/or national importance and which are not of such interest or importance. 'Public interest' or 'national interest' are not static notions. They are dynamic concepts. Union control of any industry considered expedient in public interest, today, may not be so regarded in future. Concepts keep changing with change in cirucumstances. Enumeration of specific industries in Entry 52, itself is thus neither feasible no desirable. The Entry has advisedly left it to Parliament to determine by law from time to time as to whether Union control over a particular industry would be expedient in the public interest.

2.10.55 However, this is not to say that once an industry has been so brought by Parliament by law under the control of the Union by including it in the enactment, (in the instant case in the First Schedule to the IDR Act), it should remain there for ever. We have in Chapter XII on "Industries", emphasised the need for periodic review of laws enacted under Entry 52, List I.

2.10.56 We have recommended that Chapter[35] that there should be a review, every three years, to determine whether, in respect of any of the industries in question, the Union's control should be continued or relaxed. Such a review may be undertaken by a committee of experts, on which State Governments should be represented on a zonal basis. The result of the review may also be placed before the National Economic and Development Council proposed by us. This will help foster the needed coordination and co-operation between the Union and the States.

2.10.57 This will go a long way in ensuring that at any point of time, only such industries are kept within the purview of this Act, Union control of which is essential in the public or national interest. As we are of the view that the remedy of the problem lies not in enumeration of specific industries of national or

public interest in Entry 52, itself, but in effective periodic review of the list of industries included in the IDR Act (or any other Act passed under Entry 52, List I), we do not recommend amendment of this Entry

itself, as suggested. The necessity of making any consequential change in Entry 24, List II also, does not arise.

2.10.58 **Entry 53, List I**—"Regulation and development of oil-field and mineral oil resources: petroleum and petroleum products: other liquids and substances declared by Parliament by law to be dangerously inflammable."

One State Government has suggested that the Entry may be shifted to the Concurrent List, but has not given any reasons in support of it. Another State Government has suggested that the Union's control may be limited to petroleum, oil and

gas exploration, extraction, transport and marketing, and petroleum refineries and gas processing units. It has suggested that wholesale marketing of petroleum products and LPG should be in the State List. It has also suggested that dangerously inflammable substances should be the concern of the States as it will have to bear the consequences of any mishap relating to such substances, and that to ensure uniform approach to these substances on the part of the States, the Inter-State Council may frame guidelines on the subject. Yet another State Government has urged that onshore development of Oil fields and mineral oil resources should be transferred to the State List for balancing regional development and for allowing the State to obtain a just share in the profits made by the Central Government.

2.10.59 Regulation and development of oil-fields and mineral oil resources is a matter of vital interest to the nation as a whole. It is an essential commodity for the economic life of the community. It is, therefore, not reasonably possible to say that its inclusion in List I was unjustified. Availability of petroleum and petroleum products is important not only for development of the country but is also of significance from the view-point of defence. Safe storage, handling and transportation of inflammable substances is today a very complex subject. We, therefore, do not find a good case for transferring it to the Concurrent List or any portion of this Entry to the State List.

2.10.60 **Entry 54, List I**—"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."

It has been suggested by a State Government that this Entry may be shifted to the Concurrent List. Another State Government has stated that the Union ought to be concerned with key and strategic minerals. Even in the case of strategic minerals, unless security considerations for conservation of these minerals require otherwise, the Union should be concerned only with significant deposits. It has suggested that Union's control may be limited to key and strategic minerals. A list of such minerals to be enumerated in Entry 54 has also been furnished. We have dealt with "Mines and Minerals", separately.[36] Mines and minerals furnish an important industrial input for economic and industrial development. Entry 23 of List II provides for "Regulation of mines and mineral development subject to provision of List I.....'' Parliament has enacted Mines and Minerals (Regulation and Development) Act, 1957. The observations made by us in regard to enumeration of certain industries in Entry 52 are equally valid in respect of the suggestion to enumerate certain minerals in Entry 54, itself. For all those reasons we are unable to support the suggestion for restricting Entry 54 to certain specific minerals or for transferring it to the Concurrent List.

2.10.61 **Entry 55, List I**— "Regulation of labour and safety in mines and oilfields."

One State Government has demanded that this Entry be shifted to the Concurrent List. Another State Government has suggested that regulation of labour and safety in oil-fields ought to be, as it is at present, within the exclusive jurisdiction of the Union, but Union's responsibility in regard to mines should be limited to such mines as are within the jurisdiction of the Union as suggested by it in regard to Entry 54. Regulation of labour and safety in mines and oil-fields is closely connected with and incidental to the main topics enumerated in Entries 53 and 54, List I. We are, therefore, unable to support the suggestion for transfer of Entry 55 to the Concurrent List or its modification.

2.10.62 **Entry 56, List I**—"Regulation and development of inter-State rivers and 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."

Contrary to the general trend of its suggestions one State Government has proposed that "diversion of the waters of inter-State rivers to any part of the territory of India and apportionment among the States (but not including the use within the State) of the waters of inter-State rivers" be added to this Entry. We note that the State Government has also suggested that all inter-State water disputes should be referred to a permanent tribunal constituted by the Supreme Court. Another State Government has urged exactly to the contrary. It has pleaded for deletion of this Entry. This State Government is of the view that Entry 56 gives the Union jurisdiction over water resources in inter-State rivers and rivers valleys even when there is no dispute between the States. According to them it confers vast and unfettered power on the Union which the Union, on account of its much larger resources, uses to encroach on an area which is rightly in the jurisdiction of the States. It is argued that there is need for greater devolution of powers to the State for accelerating development and in the crucial area of water resources this concept is equally important.

We have dealt with the various aspects of inter-State river water disputes in Chapter XVIII. Apportionment of the waters of inter-State rivers by the various States rests generally on any agreement among them in regard to the utilisation of the same. Keeping in view the sensitivities involved, the Constitution makes a special provision for resolution of water disputes (Article 262). The basic principle underlying the Inter-State Water Disputes Act, 1956 is that such disputes should be resolved, as far as possible, by negotiation and when that is not possible, by a judicial process through a tribunal constituted for this purpose, and not through litigation in courts. Water disputes raise highly emotive issues. It would not, therefore, be prudent to leave their resolution entirely to the Union executive. We are of the view that the existing arrangements which provide for judicial determination by tribunals of such complex but emotional questions—when they cannot be settled through negotiation—is the best way of dealing with them.

Water resources of inter-State rivers do not belong to any one State through which it passes. Flowing through the various States, such waters are not located in any one State. It is, therefore, essential that the Union should have jurisdiction in regard to regulation and development of inter-State rivers and river valleys to the extent determined by Parliament to be expedient in public interest.

2.10.63 **Entry 58, List I** — "Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies".

It has been suggested that regulation and control of manufacture, supply and distribution of salt by agencies other than Union agencies should be taken out of this Entry and transferred to the State List. It is pertinent to note that salt is one item which is consumed by every citizen and essential for human existence. It is a basic necessity of life. But production is concentrated in a few States along the sea coast. A relatively insignificant amount is produced by way of lake or mineral salt etc. in a few non-maritime States. The regulation and control of manufacture, supply and distribution of salt is thus a matter of national interest. Therefore, it should remain in the Union List.

2.10.64 **Entry 60, List I**—"Sanctioning of cinematograph films for exhibition."

The suggestion of a State Government is that this Entry should be transferred to the State List. It is argued: "The current system of censoring by Board of Censor nominated by the Union which might or might not adequately provide for representation from each of the States, is a feature which has to be borne in mind while considering the real purport of this Entry. India has got now a linguistically based foundation with certain traditions, cultures, practices and habits peculiar to each State. (sic) Even the faiths are some times radically different. Cinematograph exhibition has now attained a peculiar position in the field of communication and information. Having regard to the different tastes, varied culture, mosaic (sic) habits of the people in each State in our country, the power to sanction cinematograph films for exhibition should be under the supervision and control of the States and should not be the subject-matter of legislation of Parliament. The Government suggests that this Entry, viewed in the light of independent developmental conscience of States, has to be transferred to the State List". Another State Government has also urged that this Entry be transferred to the State List. It is argued: "The suitability of cinematographic films for exhibition is intimately related to the culture, deeply-held beliefs and values of the particular population. In India there is a marked ethnic, linguistic, religious and cultural diversity. It is quite possible that a particular film which may be received very well by a predominant section in one State may provoke roits in another State where it deeply offends the sensibilities of a major section of the population."

2.10.65 The Entry relates to only one particular aspect of cinematograph viz., the sanctioning of films for exhibition. All other matters relating to cinemas are included in Entry 33 of List II. This matter

appears to have been put in List I because this has inter-State or even international implications. Some of these films have not only a country-wide market but also a world-wide one. It is a very powerful medium, which has the potentiality of endangering or strengthening national integration. If properly used, it can educate the masses on healthy lines, and in the result, weld the diverse elements into a strong nation and strengthen political and cultural unity and integrity of India. On the other hand, this suggestion of the State Government, if accepted, may result in practical difficulties. Different States may enact different criteria for sanctioning exhibition of films and the producers of films may be required to obtain a separate licence from each State Government for exhibiting them in the State concerned. This may lead to serious problems. The very fact that a film well received in one State may offend the sensibilities of people in another State, instead of supporting, militates against the suggestion for transfer of this Entry to the State List. We are, therefore, of the view that the existing arrangements need not be changed.

2.10.66 **Entries 62, 63 and 64, List I**—These three entries apart from enumerating certain institutions as institutions of national importance, provide for Parliament to declare and determine by law from time to time new institutions of national importance.

It has been suggested: "Parliament should not have any such power. Ours is a rich cultural heritage. In a free India this would be further enriched over the years. It is essential that institutions which are associated with this rich heritage, our freedom struggle, the blossoming of the nation, building up places of excellence (sic), are recognised from time to time as institutions of national importance". The State Government has, however, not given any reasons for proposing curtailment of the powers of Parliament in this regard. Another State Government has suggested that it will be unfair if Parliament brings another institution, within the jurisdiction of the Union by declaring it by law to be an institution of national importance, even if Government of India is financing it partly. On this premise it has suggested that in Entries 62 and 64 it should be stipulated that this should be permissible only if the Government of India is financing the institution to the extent of a minimum of 75 percent. In line with its suggestion to transfer "education" back to the State List, it has argued that no new Central Universities should be set up. No other State Government has raised any such objection.

2.10.67 Entry 62 covers institutions like National Library and the Indian Museum. Entry 64 deals with institutions for scientific or technical education. These institutions could be institutions of national importance by virtue of their position in depicting our national heritage or institutions of excellence in the field of scientific or technical education. It would not be appropriate to link recognition of these institutions as of national importance with a degree of minimum funding by the Government of India. Extent of funding by Government of India is a matter of administrative convenience. We are, therefore, unable to support the suggestions for modification of Entries 62 and 64. We have also not found it possible to support the suggestion that Education should be brought back into the State List. Therefore, we are unable to agree to the modification of Entry 63.

2.10.68 **Entry 66, List I**—"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions".

It has been suggested by one State Government that the Entry be transferred to List II. Another State Government has suggested that in line with its suggestion that Education should be again placed in List II, the jurisdiction of the Union under Entry 66 should be limited to only those institutions, which are financed by the Union to the extent of a minimum of seventyfive percent and declared by law to be institutions of national importance. Coordination and determination of standards in institutions of higher education or research and scientific and technical institutions on a uniform basis for the whole country is vital for the growth of the nation. It is significant that in 1976, the Entry regarding "Education" was transferred from the State List to the Concurrent List. In the circumstances, it is not clear why the Union should be deprived of this power. No other State Government has objected to this Entry. We are unable to support this suggestion. The problem has been dealt with further in paragraphs 2.17.08 to 2.17.17.

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

2.10.70 As regards ancient and historical monuments and records and archaeological sites and remains, other than those covered by Entry 67 of List I, the constitutional scheme of distribution of powers is as follows:

(i) Ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance, is part of Entry 12 in List II.

(ii) Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance, is Entry 40 in List III.

2.10.71 In all the above Entries, the expression "declared by or under law made by Parliament" was inserted by the Constitution (Seventh Amendment) Act, 1956 replacing the expression "declared by Parliament by law". In the Government of India Act, 1935, Entry 15 in List I, the Federal Legislative List, read as "Ancient and historical monuments; archaeological sites and remains".

2.10.72 One State Government has suggested that both Entry 67 in List I and Entry 40 in List III should be transposed to the State List. However, that Government has not given any reason in support of the suggestion.

2.10.73 Ancient and historical monuments and records and archaeological sites and remains are not matters purely of State or local interest. These have aspects of general, historical, cultural or religious importance, extending beyond the territorial boundaries of the States wherein they are located. The upkeep of ancient and historical monuments and archaeological operations both require highly sophisticated technologies and large investments. Some of them may be more important than others from the national point of view. A few may even be of international interest. That is why Parliament has been empowered by Entry 67 in List I to make a law enabling these to be declared to be of national importance and taken over by the Union.

2.10.74 Even if the archaeological finds and remains at a particular site are not of national importance, it is essential that Archaeological Departments in individual States, in the interests of scientific investigation, histrocial research and due preservation of sites and remains, should follow standard methods, processes and procedures. This explains why this subject has been included in the Concurrent List as Entry 40 enabling the Union *inter alia* to lay down such standards.

2.10.75 Also, maintenance and preservation of ancient monuments and archaeological sites and remains are quite expensive. Therefore, retention of Entries 67 and 40 in Lists I and III respectively is advantageous to the States as the related expenses will continue to be borne largely by the Union.

2.10.76 We are, therefore, of the view that there is now a fair sharing of responsibilities as between the Union and the States, in the matter of ancient and historical monuments and records and archaeological sites and remains and that Entries 67 and 40 in List I and III, respectively, do not need any change.

2.10.77 **Entry 76, List I**—"Audit of the accounts of the Union and of the States".

Two State Governments have recommended that this Entry should be amended and the subject of "audit of the accounts of the States" should be transferred to the State List. Barring these States no other State Government, political party or individual has made such a demand.

2.10.78 Articles 148 to 151 of the Constitution deal with the office of the Comptroller and Auditor General (C& A.G.). The C & A.G. holds a Constitutional office (Article 148). Article 149 provides *inter alia* that his duties and powers in relation to the accounts of the Union and the States may be prescribed by or under a law of Parliament. Under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, he is *inter alia* responsible for the audit of the accounts of the Union and the States. Under Article 150, the form of accounts of the Union and the States is prescribed by the President on the advice of the C & A.G.

2.10.79 As discussed in the Chapter on "Financial Relations", there is close interaction between the Union and the State Governments in fiscal and financial matters. Maintenance of accounts of these Governments on the basis of uniform principles, early detection by an independent authority of irregularities in financial transactions, and timely remedial action to correct the irregularities, are some of the basic ingredients of proper fiscal and financial management and coordination between the Union and the State Governments in these fields. It would be difficult, if not impossible, to achieve these objectives if

there were to be a multiplicity of audit authorities each prescribing its own system of accounting and adopting its own audit methods and procedures. The Constitution has, therefore, provided a single authority viz. C & A.G., subservient neither to the Union Government nor to the State Governments, who is empowered to advise on the form in which accounts of the Union and the States are to be kept, and to audit the accounts. Thus the Constitution envisages the C & A.G. to function as the watchdog of the country's finances. This arrangement makes for economy in expenditure as well. We are, therefore, unable to support the proposal for modifying Entry 76.

2.10.80 **Entry 84, List I—**"Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption,

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry".

It has been suggested by one State Government: "The power to levy excise duty on medicinal and toilet preparations containing alcohol etc. should be made over to the States". This Entry was incorporated as it was felt at the time of framing the Constitution that this was essential for the development of the pharmaceutical industry. The levy of different rates of such duties in different States, it was felt, would lead to a discrimination in favour of goods imported which would be detrimental to the interest of the local industry. No hardship has been brought to our notice on account of existing Entry. Another State Government has drawn attention to the fact that whereas that State contributes 5 to 6 percent of the Union Excise revenue, it receives only 1.2 percent of the 40 percent distributed on the recommendation of the last Finance Commission. It has, therefore, urged that excise duty on industrial units defined by Parliament by law as small-scale units be excluded from the jurisdiction of the Union and shifted to the State-List. We have pointed out in the Chapter on Financial Relations that such division would lead to many administrative problems. For these reasons and those mentioned in the Chapter on Financial Relations, we are of the view that there is no need for a change in the existing Entry 84 of List I.

2.10.81 **Entry 90, List I—**"Taxes other than stamp duties on transactions in stock exchanges and futures markets".

It has been suggested that the power regarding taxes on "futures markets" should be transferred to the State List because it is consequential to the State Government's suggestion for transfer of the subject "futures markets" to the State List. We have already dealt with "futures markets" in paragraph 2.10.48. In view of that, we cannot support this suggestion.

2.10.82 **Entry 97, List I—**This is a residuary Entry. It has already been considered alongwith Article 248 in paras 2.6.01 to 2.6.18 of this Chapter.

11. *NEED FOR CONCURRENT LIST*

2.11.01 The Concurrent List, at present, comprises 52 items. The State Legislatures are fully competent to legislate with respect to matters in this List, subject to the rule of repugnancy in Article 254. If Parliament *completely* occupies the field of a concurrent Entry, the power of the State Legislatures to legislate in the same field is rendered inoperative. The parameters of the rule of repugnancy and its effect on the State legislative power have been discussed earlier in paras 2.5.06 to 2.5.10 of this Chapter. Reservation of State Bills under clause (2) of Article 254 read with Article 200 will be dealt with the later in a separate Chapter[37]. Issues directly related to entries in the Concurrent List will be considered here.

Demand for abolition of the concurrent list

2.11.02 Two State Governments and their supporting parties have proposed abolition of the Concurrent List and transfer of all its items to the State List. The demand apparently rests on two-fold premises. First, that in a truly federal Constitution there is no need for a Concurrent sphere of jurisdiction, and, as such, a polity postulates a complete and mutually exclusive division of power between the two levels of government. Second, that the Concurrent List has been operated by the Union in a monopolistic and unilateral manner as if it were a second Union List.

2.11.03 Thus, the first point for consideration is, whether from a functional stand-point, it is feasible in any system of two levels of government, to have no area, whatsoever, of their concurrent responsibility or overlapping jurisdiction. The history of the working of the older federations attests that the emergence of a wide-ranging area of concurrent jurisdiction is inevitable with the passage of time.

Position in USA

2.11.04 The Constitution of the United States of America is supposed to be a classic model of water-tight compart-mentalisation of governmental functions. It enumerates the power of the National Government and reserves residuary powers, except those prohibited by the Constitution, for the States. It has no Concurrent List. Most of the powers delegated to the National Government are specified in Article 1, Section 8. All the powers granted to the Congress are not exclusive. Over the years as a result of judicial interpretation, a concurrent field has emerged. Those powers which do not belong to the Congress exclusively, *and are not forbidden to the States,* are concurrent in the sense that so long as the Congress does not formally pre-empt or occupy the subject-matter of these powers, the State legislatures may also exercise them. Instances of matters which fall under this 'concurrent' category are: bankruptcy, electric power and gas, regulation of public utility, food and drug regulation, public welfare and social insurance, planning, taxes, borrowing money, establishment of courts, chartering banks, corporations, acquisition of private property for public purposes etc. Most of these 'concurrent' powers are liable to pre-emption by the Congress through statutory elaboration, while others such as the power to tax, are not pre-emptible. Thus, in this so-called concurrent sphere the legislative power of the Congress predominates over that of the State Legislatures. Nonetheless, the scope of concurrent sphere continues to be large because Congress seldom occupies to the full, the field of a subject in the concurrent sphere. Indeed, the Congress did not for a number of years after the advent of the U.S. Constitution, exercise all the powers delegated to it. The power to regulate bankruptcies, for instance, was not exercised by it until 1933. Prior to the passage of the Water Quality Act, 1965, the occasions on which Congress exercised its power of total or partial pre-emption in respect to matters in the concurrent sphere, were few and far between. The underlying rationale of the pre-emption doctrine is that the Supremacy Clause in Article VI, Clause 2 of the United States Constitution invalidates State laws that interfere with, or are contrary to the laws of the Congress. The doctrine does not withdraw from the States either the power to regulate what is merely a peripheral concern of federal law or the authority to legislate when Congress could have regulated a distinctive part of a subject which is peculiarly adapted to local regulation but did not. In case of a conflict, between a State law and a Federal law on a concurrent subject the former must yield to the latter[38]. An analogue of this rule is embodied in Article 254 of our Constitution. After 1965, Congress has evinced an increasing tendency to pass such pre-emptive statutes relating to matters in this so-called concurrent sphere. Air Quality Act, 1967 and Pollution Control Amendments of 1972 are examples.

2.11.05 Former pre-emption apart, through the technique of conditional grants-in-aid, the Federal Government of the United States of America has immensely expanded its role and extended its activities to many fields which are traditionally the concern of the States and their local sub-divisions. After 1960, “the federal role has become bigger, broader and deeper-bigger within the federal system both in size of its inter-governmental outlays and in the number of grant programmes; broader in its programme and policy concerns..... .....deeper in its regulatory thrust and pre-emptions” (ACIR Report). Today, the delivery of most governmental services in the United States has become inter-governmental in nature and most functional responsibilities from a practical stand-point, can no longer be described as exclusively of federal or state or local concern. The federal government is now playing an ever-increasing role in functional areas outside all those delegated to the Congress by Section 8 of Article 1. This is a major development. The broad interpretation placed by the Supreme Court of United States on the Commerce Clause, Police Power and General Welfare in its Constitution has had the effect of narrowing down the scope of legislative power of the States in various fields. Nonetheless, where diversity and not uniformity is needed and the matter is considered to be one of local or State concern, the States are conceded the power of legislation.

Canada

2.11.06 Sections 91 and 92 of the Constitution Act of Canada enumerate the Classes of Subjects within the exclusive competence of the Dominion and the Provinces, respectively. Section 95 places only two subjects *viz.,* Immigration and Agriculture within the Concurrent legislative competence of the Dominion

and the Provinces. Subsequently, through an Amendment in 1951, Section 94A was inserted which brought 'old age pensions' within the overlapping jurisdiction of the Dominion and Provinces. A profound transformation has taken place in the institutions of government in response to a sequence of changing pressures. Judicial interpretation has also facilitated this change. Inter-governmental bargaining tend to take place among executives, to evolve complex agreements and tax transfer arrangements and on occasions confront legislatures with a *fait accompli.* The position has been succinctly summed up by the Royal Commission on Economic Union and Development prospects for Canada, (1985), thus:

> "..... The categories set out in those sections (SS 91, 92, 95 etc.) largely reflect mid-nineteenth-century attitudes towards governments; they bear little relation to the functions of the state today or to the concepts and terminology of policy decision. The area of *de facto* concurrent Federal-Provincial jurisdiction have multiplied far beyond the formally designated fields of immigration, agriculture and pensions .....".

2.11.07 A persistent demand has been made in recent years to include many more subjects in the formally demarcated Concurrent field, with the object of ensuring coordination and cooperation between the two levels of governments over a much larger area of inter-governmental functions.

Australia

2.11.08 The Australian Constitution does not specifically provide for a concurrent field. But it impliedly recognises it. Section 51 of its Constitution Act enumerates the legislative powers of the Common-wealth parliament under 39 heads. There is nothing in the wording of Section 51 which makes the matters enumerated therein as subjects of exclusive legislative power of Commonwealth. It has been held in the light of Section 107 that with respect to matters enumerated in Section 51, the State Legislatures also may legislate on these subjects if considered necessary for the Government of the States. Thus, a fairly large concurrent field has come into existence in Australia. The power of the States to legislate in regard to Concurrent matters is subject to the rule of Federal paramountcy contained in Section 109 of the Australian Constitution. Article 254 of the Indian Constitution lays down a similar principle.

West Germany

2.11.09 The West German Constitution also provides for a substantial field of concurrent jurisdiction.

2.11.10 Even in the United States of America and Australia whose constitutions did not specifically provide for a Concurrent List, a large area of inter-governmental cooperation, concurrent jurisdiction and shared responsibilities has emerged. The existence of a sphere of concurrent jurisdiction is not only desirable but inevitable. Due to the inexorable pressure and inter-play of various factors—social, economic, technological, demographic, ecological and egalitarian—the role of the National Government in all dual systems is expanding. The Constitutional line dividing the domains of the national and the State Governments has become increasingly blurred. Areas of common concern to the nation as a whole are bound to grow with social, economic and technological developments. The primary goal of both levels of government is the welfare of the people. The *sine qua non* of progress towards that goal is inter-governmental cooperation, consultation and coordination between the two levels of government in all areas of common concern or concurrent jurisdiction. Elimination of all areas of concurrent jurisdiction through a constitutional amendment will only incapacitate the body politic in striving towards this goal. Considered from this aspect, the demand for abolition of the Concurrent List would be a retrograde step. Furthermore, abolition of the Concurrent List would involve a drastic change in the fundamental scheme and framework of the Constitution, which, under our Terms of Reference, we are imperatively required not to disregard. For all these reasons, it is not possible to support the demand for abolition of the Concurrent List.

12. *DEMAND FOR CONSULATION WITH STATES BEFORE UNDERTAKING LEGISLATION*

2.12.01 The next issue relating to the Concurrent List is whether there should be consultation with the States before the Union initiates legislation with respect to a matter in the Concurrent List. Almost all the

State Governments, political parties and eminent persons are of the view that there should be such consultation. However, their views vary with regard to—

(a) whether this should be a matter of constitutional obligation or of convention;

(b) the mode and extent of consultation; that is to say, whether in addition to consultation with individual State Governments, there should be collective consultation with the proposed Inter-State Council;

(c) whether this consultation should assume the character of concurrence;

(d) whether this consultation should be with the State Legislatures also.

The Instrument of Instructions issued under the Government of India Act, 1935 contained a provision that, whenever any legislation was undertaken by the Centre on a Concurrent subject, the Provincial Governments would be consulted beforehand. There is no such instrument of instructions envisaged by our Constitution.

2.12.02 We have already dealt with the demand (c) in para 2.5.22. It would, in effect, reverse the rule of Union Supremacy into one of State Supremacy. For reasons given there this demand cannot be supported.

2.12.03 **Regarding (d)—**One State Government has suggested the insertion of a new Article 254A as follows:—

"**254A. Consultation with State Legislature and Parliament—**(1) No Bill with respect to any matter enumerated in the Concurrent List shall be introduced in either House of Parliament unless the Bill has been referred by the President to the Legislatures of the States for expressing their views thereon within such period as may be specified in the reference and the period so specified has expired.

(2) No Bill with respect to any matter enumerated in the Concurrent List shall be introduced in the House or either House of a State Legislature unless the Bill has been referred by the Speaker of the Legislative Assembly of such State to the Speaker of the House of the People for expressing the views of Parliament thereon within such period as may be specified in the reference and the period so specified has expired".

2.12.04 It will be observed that instead of facilitating, this proposal, if implemented, would make the working of the constitutional scheme of checks and balances with respect to the concurrent sphere of jurisdiction exceedingly cumbersome and dilatory. We cannot, therefore, commend this proposal.

13. *RATIONALE OF THE CONCURRENT LIST*

2.13.01 The rationale of putting certain subjects in the Concurrent List and giving the Union and the State Legislatures concurrent powers regarding them, is that they can be classified as matters neither of exclusive national concern, nor of purely State or local concern. They belong to a grey zone in which the Union and the States have a common interest. On the main aspects of these subjects, uniformity in law throughout the country is necessary in the national interest. The jurisdiction of a State Legislature, by its very nature, is restricted to persons, objects and things situated within its territories. It does not extend to those things with which it has no territorial nexus. The State Legislature, therefore, cannot ensure such uniformity. Further, if a mischief or epidemic emanating in one State extends beyond its territorial limits, it can be effectively prevented or remedied only by a law passed by Parliament. On the other hand, problems and conditions may vary greatly from State to State and may require diverse remedies suited to their peculiarities. If a Union law, occupying the entire field of a Concurrent subject, attempts to enforce a Procrustean uniformity, regardless of the special problems of different States requiring diverse solutions, it may defeat its own purpose. Where diversity is needed, the States know what is best for them. That is why, the Constitution gives to the State Legislatures, also, power to make laws on a Concurrent matter to suit its peculiar conditions. Then some subject matters of legislation may be multifaceted. By their very nature, they cannot be wholly allocated either to the Union or the States. Overlapping is unavoidable in such cases. A typical instance is of Trade and Commerce. Where it involves trade with foreign countries or import or export across borders, it is the subject-matter of Entries 41 and 42 of the Union List. Where it concerns Trade and Commerce within the State, it is incorporated in Entry 26 of List II. But 'Trade and Commerce' in the products of any industry controlled by the Union or of food grains and like items is put in Entry 33 of the Concurrent List. Entry 26 of List II is subject to Entry 33 of List III.

14. *UNION LEGISLATION ON A CONCURRENT SUBJECT-PRIOR CONSULTATION WITH STATES ESSENTIAL FOR HARMONIOUS WORKING OF THE SYSTEM*

2.14.01 The enforcement of Union Laws, particularly those relating to the Concurrent sphere, is secured through the machinery of the States. Coordination of policy and action in all areas of concurrent or overlapping jurisdiction through a process of mutual consultation and cooperation is, therefore, a prerequisite of smooth and harmonious working of the dual system. To secure uniformity on the basic issues of national policy with respect to the subject of a proposed legislation, collective consultation with the representatives of the State Governments at the forum of the proposed Inter-Governmental Council will also be necessary.

Whether such Consultation should be a Constitutional Obligation or one of Convention

2.14.02 The only question that now remains is whether such consultations should be made a matter of constitutional obligation or left to be observed as a salutary convention. A number of State Governments and political parties insist that the requirement of consultation should be incorporated in the Constitution to ensure its strict observance, while others would allow the matter to rest on convention. We have given careful consideration to these divergent views.

2.14.03 We are of the view that it is not necessary to make the Union-State consultation regarding legislation on an item in the Concurrent List a Constitutional requirement. This will make the process needlessly rigid. But this should be a firm convention. The advantage of a convention or rule of practice is that it preserves the flexibility of the system and enables it to meet the challenge of an extreme urgency or an unforeseen contingency. We recommended that this convention as to consultation with the State Governments individually, as well as collectively, should be strictly adhered to, except in rare and exceptional cases of extreme urgency or emergency.

15. *CHANGES SUGGESTED IN LIST III*

2.15.01 We have discussed earlier that there is a category of legislative subjects which are neither exclusively of national interest, nor purely of domestic or local concern of the States. They are subjects some aspects of which are of national interest and others of State interest. Both these aspects are inextricably intertwined. Their relative strength and proportion in a subject does not, over a long period of time remain, constant or immutable. Nonetheless, they are matters of common or conjoint interest to the Union and the States. Uniformity, at least in the main principles of law on such subjects, is desirable. These matters, therefore, cannot be allocated to the exclusive legislative sphere either of the Union or of the States. Their proper place is in the sphere of concurrent jurisdiction of the Union and the States. Bearing in mind these broad principles we will now consider the demand for transfer of certain entries from the Concurrent to the State List.

2.15.02 Two State Governments have demanded far-reaching changes in the Concurrent List. One of them wants that the subject-matters of thirty-four Entries in this List, namely: 3 (partly), 4, 5, 8, 10, 11, 11-A, 14, 15, 16, 17, 17A, 17B, 18, 19, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 33A, 34, 35, 36, 37, 39, 40 and 42 (partly) be transferred to the State List. It has further suggested modification of Entries 27 and 45 of List III. A regional Party of that State has demanded that, with the exception of seven Entries, namely: 4, 27, 29, 41, 45, 46 and 47, all other Entries in List III be transferred to the State List. The other State Government has also made similar suggestions. In addition, this State Government has made certain suggestions in respect of Entries 20-A and 38. It has also suggested placing the residuary powers in the Concurrent List.

2.15.03 For considering the proposed changes it will be convenient to divide the Entries in question into five groups.

16. *GROUP I*

2.16.01 **Group I.—**The first group would cover Entries 3, 4, 14, 15, 18, 21 and 32 of List III. No specific reason has been given for transfer of these Entries to the State List.

2.16.02 **Entry 3, List III.—**"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". One State Government has suggested that since public order is a State subject preventive detention for reasons connected with the security of a State, or the maintenance of public order and the persons subjected to such detention should be a State subject. Further, there may be no detention for reasons connected with the maintenance of supplies and services essential to the community and persons who endanger such supplies and services may be proceeded against only for violation of specific laws. On these premises it has suggested that Entry 3 of List III may be deleted and shifted in a modified form as Entry 1-A to List II. Another State Government has suggested retention in the Concurrent List of "preventive detention for reasons connected with maintenance of services and supplies essential to the community and persons subjected to such detention" and shifting of the remaining part of the Entry to the State List.

2.16.03 Maintenance of Public Order, simpliciter, except where it requires the aid and use of the forces of the Union, is the sole responsibility of the States. Lack of public order would cover a very wide range of situations from chaos and threat to the security of the State by small disturbances. The prevention of a threat or danger due to war, external aggression or armed rebellion to the security of the Union or any part of the territory thereof, in a situation of grave emergency, is the responsibility of the Union (Article 352). Where in a State, a problem of public disorder assumes the magnitude of an 'internal disturbance', it is the duty of the Union to intervene and protect the State against such disturbance (Article 355). When does a public disorder assume the character of an 'internal disturbance', is a matter which has been left by the Constitution to the subjective satisfaction of the Union Government. Thus, the aggravated forms of public disorder are matters of common concern of the Union and the States.

Preventive detention is an extraordinary power and it cannot be used for dealing with ordinary problems of public order. The legislative power in respect of preventive detention is expressly limited by the Constitution to the specific purposes having a reasonable nexus with (i) Defence, Foreign Affairs, or the Security of India (Entry 9, List I); (ii) the Security of a State, the maintenance of public order or the maintenance of supplies and services essential to the community (Entry 3, List III). The difference between problems of 'public order' simpliciter, and 'public disorder' of an aggravated kind which could call for preventive detention, though of a degree, should be treated as if it was a difference of a kind. Assuming for the sake of argument that 'public order' within the contemplation of Entry 3 of List III means the same thing as in Entry I of List II, then it must be remembered that preventive detention is not the normal mode of maintaining 'public order'. Preventive detention is not meant to deal with ordinary problems of law and order. Neither Entry 9 of List I nor Entry 3 of List III confers on legislatures powers to make any law relating to preventive detention for reasons connected with the maintenance of law and order and 'persons subjected to such detention'. The reasons for non-conferment of such power are obvious. If the law and order problems were allowed to be controlled by or under the preventive detention laws the executive would have surely taken recourse to the extraordinary machinery of detention without trial on bare subjective satisfaction rendering the ordinary criminal law otiose, futile and superfluous. It follows, therefore, that detention for purpose of 'law and order' is foreign to the preventive detention laws.

2.16.04 Preventive detention being an extraordinary power must be exercised with utmost caution and care. It has the potential to subvert the democratic form of government based on rule of law. Inclusion of the subject in the Concurrent List enables Parliament, by law to regulate the exercise of this power throughout the country, in accordance with certain principles. Articles 21 and 22 confer important fundamental rights relating to protection of life and personal liberty and protection against arrest. These fundamental rights are part of the very foundations of our democracy. Preventive detention is an exception and a drastic power available to the executive. Clauses (4) to (7) of Article 22 provide for certain safeguards in case of preventive detention. In order that preventive detention is not misued it is essential that Parliament should have the power to lay down a uniform law not only covering the essentials of law but also providing necessary safeguards. Neither State Government has brought to our notice any hardship experienced by them on account of the existing arrangements. We notice that Section 3 of the National Security Act (1980) empowers both Union and State Governments to make orders detaining a person under certain circumstances. By way of safeguard, the Central Government may revoke or modify the detention

order made by a State Government or any officer subordinate to it (Section 14). We are, therefore, unable to support the suggestion for transfer of Entry 3, List III or any part of it to the State List.

2.16.05 As regards the suggestion that persons who endanger the maintenance of supplies and services essential to the community may be proceeded against only for violation of specific laws, it may be noted that criminal proceedings and preventive detention are not parallel proceedings. The former is punitive, the latter is preventive. An order of preventive detention is not a bar to prosecution for specific offences.

2.16.06 **Entry 4, List III.—**"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". The suggestion of one State Government is that this Entry may be transferred to the State List with the modification that transfer of prisoners from one State to another State would be made with the consent of the other State. Another State Government has suggested that this Entry may be deleted. They are of the view that there is no need to transfer the persons detained outside the State.

2.16.07 The subject-matter of this Entry has an inter-State aspect. So far as that aspect is concerned, it can be effectively dealt with on uniform basis, only under a law made by Parliament. The laws made by a State Legislature cannot have operation beyond its territorial limits. Therefore, if the Entry is transferred to the State List, it will become insperative. Even the State Government asking for its transfer, seems to be conscious of this difficulty. This is why it has suggested that before transferring it to the State List, the words "with the consent of the transferee State" be inserted in this Entry. Transfer outside the State of a person detained, may become necessary in certain extreme cases of large-scale public disorders and violent crime, in the interests of the security of the State and the prisoners and for like administrative reasons. We cannot support the proposal for amendment of this Entry.

2.16.08 **Entry 14, List III.—**"Contempt of Court, but not including contempt of the Supreme Court".

The broad object of the law of contempt of court is to safeguard the status, dignity and capacity of the courts to administer justice without fear or favour, obstruction or interference. A unique feature of our two-tier system, which distinguishes it from other federations, is that it has a single unified judiciary which administers Union Laws as well as State Laws. The Union and the States are thus equally interested in the subject-matter of this Entry. This subject has also a nation-wide dimension which can be effectively handled only by Parliament. An illustration will make the point clear. Parliament has, in exercise of its power under this Entry, passed the Contempt of Court Act, 1971. Section11 provides that a High Court shall have jurisdiction to enquire into or try a contempt of itself or any subordinate court, whether the contempt was committed within the territorial limits of the State in which it exercises jurisdiction or outside it. This provision is an illustration of the nation-wide aspect of the subject. In view of Article 245, only a law made by Parliament could take effective care of it.

2.16.09 Inclusion of the subject of 'contempt of court, in the Concurrent List is consistent with the constitutional scheme which safeguards the position of the High Court from being undermined by State Legislation. If a legislation relatable to Entry 14, List III is passed by a State Legislature it can be stopped from reaching the Statute Book by the action of the Governor under Article 200 (Second Proviso) and the exercise of Presidential veto under Article 201. Even if the legislation escapes this check and receives the assent of the Governor, it can be amended, varied or repealed by Parliament either directly or by passing a law inconsistent therewith *vide* Proviso to Article 254(2). If the subject-matter of this Entry is transferred to the State List, these safeguards against parochial or unjustifiable use of their legislative powers on this subject, by States, would disappear. The proposal is thus untenable.

2.16.10 **Entry 15, List III.—**"Vagrancy nomadic and migratory tribes". This subject has inter-State dimension. The activities and mobility of such tribes do not remain confined to boundaries of a particular State or States. The problems relating to them have inter-State dimensions. The reason for including this subject in the sphere of concurrent jurisdiction is thus obvious. We find no substance in the demand for its transfer to the State List.

2.16.11 **Entry 18, List III.—**"Adulteration of food stuffs and other goods". This evil has country-wide dimensions. Adulteration of foodstuffs and goods may take place in one State and its deleterious effects may occur in another State where they are consumed. This widespread evil can be effectively combated at the National level. Union laws on the subject can be supplemented by the State laws. If there are peculiar

problems limited to a particular State which require special legal remedies in variance with those uniformly provided in the Union law, a State legislation enacted with President's assent under article 254(2), can take care of the same. We are, therefore, of the view that this Entry should continue to remain in the Concurrent List.

2.16.12 **Entry 21, List III.—**"Commercial and industrial monopolies, combines and trusts". The commercial and industrial activities related to the subject have inter-State dimensions and implications. Unethical trade or industrial practices can be effectively regulated or curbed only by a Union law applicable uniformly throughout the country. Hence the reason for putting this subject in the Concurrent List.

2.16.13 **Entry 32, List III.—**"Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways".

This Entry is subject to Entry 24 of List I which reads:

> "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 water-ways".

2.16.14 Regulation of shipping and navigation on inland waterways has a very close and substantial connection with shipping and navigation on inter-State waterways. Navigation on inland waterways may even have a close nexus with sea-ports and navigation on sea waters. This aspect of the subject-matter of Entry 32 is of national significance. It may even assume dominant importance from the national point in the circumstances of a particular waterway. Parliament has been given under Entry 24, List I, the exclusive power to declare by law that a particular inland waterway shall be a national waterway. To the extent of such declaration, the power of the State Legislatures under Entry 32 would stand superseded. Since the inter-State and intra-State aspects of the subject-matter of Entry 32 cannot be sharply distinguished or isolated from each other, it cannot be allocated to the exclusive legislative sphere either of the States or of the Union. Its appropriate place can only be in the Concurrent List.

17. *GROUP II*

2.17.01 This group may be sub-divided into three sub-groups—(a), (b) and (c).

Sub-Group (a)

It will comprise Entries 11A, 17B, 25 and 33A. The only argument advanced for shifting these Entries to the State List is that the Constitution (Forty-Second Amendment) Act, 1976, during the Emergency period, brought them from List II to List III.

2.17.02 The mere fact that these Entries were originally in List II, does not, by itself, lead to the conclusion that their transfer to the Concurrent List was not justified. The Forty-Second Amendment came into force on 3-1-1977, i.e., about 27 years after the advent of the Constitution. These two and a half decades was a period of crises and trial for India. It had to fight three wars to protect its independence against external aggression. On the home front, it had to meet the challenge of fissiparous forces which exploited for their sustenance a host of problems facing the country. There was an acute food shortage accentuated by a rapidly increasing population. There was paucity of essential commodities, industrial goods and essential machine tools. The bulk of the population was and essential machine tools. The bulk of the population was illiterate and living below the poverty line. There were great social and economic disparities. India made an all-out effort to tackle these problems. It embarked on social and economic planning and development in a big way under national leadership. For this purpose, modern advances in technology and communications were pressed into service. In India, as elsewhere in the world, these changes in technology, communications and social environment had a profound influence on the thinking patterns, expectations and attitudes of the people with respect to the responsibilities of the Union and the State Governments. Several governmental functions which two and a half decades earlier were considered purely of State or local concern, now became in the general perception of the people, matters of shared responsibility of the Union and the States.

2.17.03 The expressions 'national interest', or 'State or local concern' do not denote static ideas. They are opinions or beliefs grounded on experience conditioned by a given set of circumstances. These concepts

undergo change on fresh experience in a changed set of circumstances. The twenty-five years after the commencement of the Constitution, was a period of renascent activity, experimentation and experience. The transfer of the Entries in question to the Concurrent List is, therefore, to be appreciated in the light of

the experience of the working of the Constitution during the two and a half decades preceding the Forth-Second Amendment.

2.17.04 **Entry 11A, List III—**"Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts".

The field of legislation covered by this Entry was originally a part of Entry 3 of List II. By Section 57 (b) (iii) of the Forty-Second Amendment Act, 1976, that part was omitted from Entry 3, List II, and by clause (c) of Section 57 it was inserted in List III as item 11A.

2.17.05 No specific argument has been advanced to show that the transfer of this Entry to the Concurrent List has, in operation, been detrimental to the interests of the States. Nor is there any evidence before us from which such a factual conclusion can be drawn. However, one general argument is that the transposition of this Entry impairs the basic federal features of the Constitution. In *re Special Courts Bill*, 1978[39], a similar argument was advanced. The Supreme Court negatived it with the observation:

> "We are unable to appreciate how the conferment of concurrent power on the Parliament in place of the exclusive power of the States, with respect to the constitution and organisation of certain courts affects the principle of federalism in the form in which our Constitution has accepted and adopted it".

In regard to the scope of Entry 11A, the Court opined that the words of this Entry are sufficiently wide to enable Parliament not merely to set up courts of the same kind and designation as are referred to in the relevant provisions but to create new or special courts subject to the limitation mentioned in the Entry as regards the Supreme Court and the High Courts.

2.17.06 The Union Government, while introducing the Forty-Second Amendment Bill in Parliament, did not make any statement of 'objects and reasons' for all the proposed amendments including the one relating to the Entry in question. We are, therefore, left to draw our own inference from the apparent circumstances. The subject-matter of the Entry in question is allied and complementary to the subjects of Entries 1, 2 and 13 of List III. Though two State Governments have suggested the transposition of Entry 11-A to List II, they have not sought any change in regard to these three Entries. A good part of the field of these three Entries has been occupied by the great Codes—Indian Penal Code, Criminal Procedure Code and Civil Procedure Code. The origin of these Codes goes back to the nineteenth century. The pre-Constitution Codes of Criminal Procedure and Civil Procedure have recently been replaced by the revised Codes enacted by Parliament. The concept of uniformity and equality of treatment before law ensured by these Codes have become deeply ingrained in the common consciousness of the people of India. The inclusion of this Entry in the Concurrent List enables Parliament to secure a measure of uniformity in the administration of justice, and constitution and organisation of courts subordinate to the High Court, in the States. To some extent, the area of Entry 2 occupied by the Criminal Procedure Code, could overlap the laws enacted by the States with regard to the organisation and jurisdiction of the subordinate courts in the States. By bringing that part of Entry 3, List II into the Concurrent List, the risk of such conflict will also be obviated. The suggestion for restoration of the subject-matter of Entry 11-A to List II is only theoretical and, perhaps, founded on imaginary fears that Parliament would occupy needlessly excessive field of Entry 11-A and render inoperative the power of the State Legislatures with respect thereto. We, therefore, find that there are not sufficient grounds for transposing this Entry back to List II.

2.17.07 **Entry 17 A, List III—**"Forests"

Entry 17B, List III—"Protection of wild animals and birds".

In 1952, the Union Government formulated the National Forest Policy. The Policy set a target of bringing 1/3rd (*i.e.* about 100 million hectares) of the total area of India under forest cover. About 75 million hectares were found recorded as under forest cover. The States, however, did not seriously implement this Policy. The depletion of forests continued. Apart from the pressures of human and cattle population and the increasing demand for fire-wood, timber and fodder, one of the main causes which led to deforestation was the diversion of forest land to non-forestry purposes. We are informed by the Government of India that contrary to the National Forest Policy, during the period of 30 years between

1951—1980, *i.e.*, before the Forest (Conservation) Act, 1980 came into force, approximately 4.5 million Hectares of the forest land were officially diverted for non-forest purposes. The average annual rate of such diversion works out to 1.5 lakh hectares. Extensive deforestation and degradation of vegetation caused an

alarming destablisation of the hydrological cycle resulting in rapid run-offs in the form of flood waters. It also led to progressive shrinkage of the habitat of wild animals and birds and erosion of genetic diversity in the recognised ecological sub-divisions of the country. Eighty-one species of mammalian fauna and some species of birds were on the verge of extinction. The welfare of tribals, who are ecologically and economically in-separable from the forest was also put in jeopardy. The adverse effects and implications of deforestation, extended far beyond the territorial boundaries of the States. The problems and mischief resulting from deforestation had assumed national dimension. There was thus ample justification for transferring "Forests" to the Concurrent List to enable Parliament to pass the Forest (Conservation) Act, 1980. The primary object of this Act is to check indiscriminate diversion of forest land for non-forestry purposes. The Union-State problems or difficulties in the administration of this Act, have been dealt with in the Chapter on "Forests".

2.17.08 **Entry 25, List III—**"Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour".

'Education' is an important legislative head. To appreciate its allocation in the scheme of distribution of powers between the Union and the States, it will be useful to have a glimpse of the history of Government policy on education over a period of 130 years preceding the Constitution. This history is interspersed by periods of extreme decentralisation and extreme centralisation. Prior to the Charter Act of 1833, each of the three Presidencies of British India formulated its own education policy. From 1833 to 1870 was a period of extreme centralisation. Thereafter, gradual decentralisation continued up to 1918. In 1897, the Indian Education Service was established. Members of this service manned all crucial posts in Provincial Education Departments. Through this service, the Centre exercised limited control over the Provincial education policy. With the introduction of dyarchy by the Government of India Act, 1919, 'education' was made a 'transferred' subject and Central control over education became minimal. This position continued till the adoption of the Constitution in 1950.

2.17.09 The Constitution, as originally adopted, tried to strike a balance between these two extremes. It allocated "Education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and entry 25 of List III" to the States as item 11 of List II. "Vocational and technical training of labour" and "Legal, medical and other professions" were included as items 25 and 26, respectively, in the Concurrent List. The authority for coordination and determination of standards in institutions for higher education or research and scientific and technical institutions was assigned exclusively to the Union (Entry 66 of List I). The Union was also enabled to assume exclusive power with respect to "institutions for scientific or technical education financed by the Government of India wholly or in part, and declared by Parliament by law to be institutions of national importance" (Entry 64 of List I). The Union is competent to set up and run its own agencies and institutions, *inter alia*, for professional, vocational or technical training or promotion of special studies of research (Entry 65, List I).

2.17.10 It is noteworthy that the subject 'education' though originally allotted by the Constitution to the exclusive State field, was subject to Entry 25 of List III and Entries 63 to 66 of List I. The distribution of power with respect to 'education', between the Union and the States in this interlinked manner was prone to conflicts and difficulties. So long as the same political party was in power at the Union and in the States, these difficulties did not come to the fore, and education, for all practical purposes, was being administered as a subject of "*de facto* concurrency". The Union and the States were co-operating and collaborating in most educational programmes and were benefitting from the large Union grants made for educational development. However, after 1967, conflicts and controversies started manifesting themselves. For example, the Government of India advised that in the interest of national integration, no State should put restrictions on admission to medical and engineering colleges on the ground of domicile. Despite persistent persuasion by the Union, the States did not agree to the suggestion. It was felt that the powers conferred on the Union in the matter of education were not adequate enough to resolve such difficulties effectively. A debate was going on in educational and political circles for more than a decade preceding the Forty-Second Amendment as to whether the subject of education should not be transferred from the State List to the

Union List or the Concurrent List. The Sapru Committee[40] suggested in its report (1964) that 'education' be transferred from the State List to the Concurrent List, while retaining Entry 66 in the Union List as it was. It was only the Forty-Second Amendment (1976) that could give concrete shape to this recommendation.

2.17.11 It was against this background that the Forty-Second Amendment transferred and combined item 11 of List II with item 25 of List III. The suggestion of the State Governments is that "education" should be transferred back to the State List.

2.17.12 Though the Statement of Objects and Reasons appended to the Constitution (Forty-Second Amendment) Bill is silent on the point, it is not difficult to discern the reasons and objects for the transposition of Entry 25 effected by this Amendment. Education is a subject of prime importance to the country's rapid progress towards achieving desired socio-economic goals. This apart, there were other objectives to be achieved. One was to enable Parliament to secure a measure of uniformity in standards and syllabi of education which is essential *inter alia,* for promotion of national integration. An incidental purpose to be served by this Amendment, was to obviate problems arising out of Union legislation encroaching obviate problems arising out of Union legislation encroaching upon the States' sphere. The chances of such conflict have been rendered remote, as a result of this Amendment. No part of the subject of 'education' now belongs to the exclusive sphere of State legislative power. The Amendment was designed to give the Union adequate power to enable it to minimise the great disparities in the levels of educational development and standards of education as between States. It was also intended to reinforce the capacity of the Union to play its role more effectively, to stimulate and assist the States in their efforts for achieving the goal of universal primary education fixed by the Constitutional Directive.

2.17.13 In our view, it will not be advisable to revert to the pre-Amendment position by transferring this subject back to the State List. However, education continues to be a very sensitive issue. In formulating a national education policy, or in its review the Union should not take a rigid stand on its paramount authority, but ensure that such a policy is framed through a process of dialogue, discussion and persuasion on the basis of consensus between the Union and the States.

2.17.14 For effective and smooth working of Union-State Relations in matters relating to higher education, close consultation and co-operation between Governments at both the levels is a must. This is so because 'co-ordination' in its intrinsic sense necessarily implies "harmonising or bringing into proper relation in which all the things co-ordinated participate in a common pattern of action". (*Gujarat University case,* AIR 1963 S.C. 703, para 25). Further, though the powers of the Union and the State Legislatures with respect to universities and institutions for higher education and research are referable to separate Lists of the Seventh Schedule, yet there is a degree of inevitable overlap between Entry 66 of List I and Entry 25, List III, The existence of such overlap was noticed in *Gujarat University case,* though the general head of education was then in the State List.

2.17.15 Even though 'education' was transposed to and included in Entry 25 of the Concurrent List by the Forty-second Amendment with effect from 3-1-1977, there has been no follow-up legislation by the Union under this head. For all practical purposes, therefore, the situation continues to be what it was before the Forty-Second Amendment. The Regulation of (University) Standards Bill, 1951 contained two provisions: One relating to the establishment of universities and the other conferring power on the Union to derecognise any degree granted by a university. These provisions were subsequently deleted possibly because, at that time, general head of 'education' was in the exclusive State List. The deletion of these provisions, in consequence, debilitated the capacity of the Union and the U.G.C. for co-ordination and determination of standards in institutions for higher education.

2.17.16 Recently, in *Osmania University Teachers Association* Vs. *State of Andhra Pradesh* (Civil Appeal 1205-06 of 1987 decided on 13-8-1987), the Supreme Court has struck down the Andhra Pradesh Commissionerate of Higher Education Act, 1986, as *ultra vires* the State Legislature, on the ground that this Act, in substance, attempted to co-ordinate and determine standards of higher education in the universities located in that State, which subject is by virtue of Entry 66, List I and the University Grants Commission Act, 1956 within the exclusive competence of the Union and its agency (U.G.C.). This Judgement of the Supreme Court has brought about a situation of stalemate or vacuum in matters relating to higher education in the universities. The Court itself pertinently observed that while the impugned Andhra Pradesh Act had disappeared as a result of its judgement, the need for such a legislation for co-ordinating

and streamlining the standards of higher education in the national interest has not "vanished into the thin air". It drew attention to the disparities, defects and deficiencies in the standards of higher education obtaining in the universities

situated in Andhra Pradesh and also in the other States. It underscored the imperative need for the U.G.C. to play a greater and more effective role in ensuring high standards of academic excellence in the various universities in India. These observations of the high authority have incidentally highlighted that the U.G.C. has been unable to carry out effectively the duty of co-ordinating and determining standards in the universities and other institutions for higher education. Without an exhaustive survey of the working of the U.G.C. and the performance of the various universities in maintaining standards of academic excellence, it is not possible for us to pin-point precisely, whether the failure of the U.G.C. to discharge its duties effectively, is due to any deficiency in its statutory powers, composition or/and *modus operandi.* Nevertheless, it is necessary to emphasise that, among others, there are two basic pre-requisites of smooth and successful working of the U.G.C. and other like professional bodies (such as I.C.A.R.), charged with the duty of co-ordinating and determining standards in institutions for higher education or research. Firstly, their composition, functioning and mode of operation should be so professional and objective that their opinion, advice or directive commands implicit confidence of the States and the universities/institutions concerned. Secondly, this objective cannot be achieved without close concert, collaboration and co-operation between the Union and the States.

2.17.17 Some such relationship is envisaged in a presenta-tion of National Policy on Education, 1986 formulated by the Government of India. Its para 2.19 declares: "The amendment of the Constitution to include Education in the Concurrent List was a far-reaching step whose implications... sub-stantive, financial and administrative... require a new sharing of responsibility between the Union Government and the States in respect of this vital areas of national life. While the States would administer the subject in the normal course, the Union Government would accept responsibility to ensure the national and integrative character of education, to maintain comparable quality and standards, including those of the teaching profession at all levels... and in general to promote excellence at all levels of the educational pyramid throughout the country. The concept of concurrency signifies a partnership...". This is as it ought to be. Education is so close to the needs and concerns of the people that active involvement of the States is vital, indeed indispensable. That being so, the best and the most feasible way of working the Union-States relations in the sphere of education, would be that norms and standards of performance are determined by the Union and its agencies like the U.G.C. set up for this purpose under Central statutes, but the actual implementation is left to the States. By the same token, a system of monitoring would have to be established by the Union.

2.17.18 **Entry 33-A, List III.**—"Weights and measures except establishment of standards".

Originally, the subject-matter of this Entry was item 29 of the State List. It was transposed to List III by the Forty-Second Amendment. No official statement of objects and reasons for this particular change accompanied the Amendment Bill. However, it is obvious that fixation of weights and measures directly affects inter-State trade and commerce. The obvious object of transferring this subject to the Concurrent List is to enable the Union to ensure with respect to this matter a measure of uniformity of policy and co-ordination of action between the Union and the States. At the same time, power of the State Legislatures to make a law in respect to this matter, subject to the rule in Article 254A, has also been preserved.

2.17.19 No practical difficulty or disadvantage experienced by the State Government, arising from the operation of Entry 33A, has been brought to our notice. We do not find sufficient reason for recommending restoration of this Entry to List II.

Sub-Group (b)

2.18.01 This sub-group comprises Entry 42—"Acquisition and requisitioning of property". In paras 2.10.37 to 2.10.41, we have already dealt with the suggestion that this Entry should be deleted and that entries 33 and 36 in List I and List II respectively, which were deleted in 1956, should be restored. We have explained there why we cannot support the proposal.

Sub Group (c)

2.19.01 The Entries which are being dealt with in this Sub-group are:

Entry 28, List III.—"Charities and charitable institutions, charitable and religious endowments and religious institutions."

Entry 30, List III.—"Vital statistics including registration of births and deaths."

Entry 31, List III.—"Ports other than those declared by or under law made by Parliament or existing law to be major ports."

The argument of one State Government for transfer of Entries 28 and 31 to List II is that under the Government of India, Act, 1935, these subjects were included in the Provincial List. Regarding Entry 30, it is pointed out that prior to the Constitution, this matter was the subject of local laws or Acts. It is suggested that the pre-Constitution position should be restored. Another State Government has stated that, keeping in view the great religious, cultural, social and institutional diversity in the country, and the very large and growing number of charities and charitable institutions, charitable and religious endowments and religions institutions, it is proper that these institutions should be subject to the jurisdiction of the State in regard to their operations in that State. They have pointed out that since such institutions sometimes also acquire a covert, if not an overt, political role, there can arise serious inter-State complications, if institutions controlled and managed in one State operate in other States without the latter having any jurisdiction in respect of their operations there.

2.19.02 The subject-matter of these Entries are not purely of State or local concern. They have important aspects of nation-wide interest.

2.19.03 Charitable and religious institutions mentioned in Entry 28 have their importance for all beneficiaries wherever they may be residing. Moreover, properties of institutions or endowments may be situated in more than one State. Likewise, their activities may extend beyond the boundaries of one State. As regards possible inter-State complications arising out of institutions, controlled and managed in one State and operating in another State, it is clear that these can best be avoided by having uniformity in regard to essential principles of the law throughout the country, and this is possible only if the Entry remains in the Concurrent List. Indeed, a shift to the State List may only add to avoidable complications.

2.19.04 Collection and determination of full and accurate statistics mentioned in Entry 30, List III, particularly about births and deaths, is not a matter of exclusive State concern. It has implications and significance for the nation as a whole. Growth or decline of population in States have an all-India impact on socio-economic problems. Uniformity in the main principles of law or policy governing the subject-matter of this Entry is, therefore, essential in the national interest.

2.19.05 The subject-matter of Entry 31 has an interface with List I and linkage with foreign trade which is patently of national interest.

2.19.06 Reversion to the pre-Constitution position would, in our view, be irrational and contrary to the basic principles on which the subjects of legislative power have been distributed between the Union and the States. We, therefore, do not subscribe to the proposition for transfer of Entries 28, 30 and 31 of List III to List II.

20. GROUP III

2.20.01 **Entries 16 and 17 of List III.—**Fall in this group. The argument is that these entries comprise matters which are purely local in character and should, therefore, be transposed to List II.

2.20.02 **Entry 16—list III—**"Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients".

It is a matter of common knowledge that persons suffering from some types of lunacy or insanity often need prolonged treatment or stay in mental hospitals or asylums. Some mentally retarded persons or mental deficients are destitutes. Others are not fortunate enough to have wealthy parents or close relations capable of bearing the expenses of their prolonged treatment or hospitalisation. The Government or some charitable persons or institutions have to bear their expenses. The smaller States with relatively meagre resources cannot efficiently maintain such institutions. The matter is thus inherently of an inter-State character.

2.20.03 To have this matter in the Concurrent List is advantageous to the States. The Union shares the responsibility with the States in establishing or aiding the establishment or maintenance of asylums from its

own funds or by making grants. The asylums established or licensed by the Union, cater to mental patients or lunatics from a number of States; whereas lunatics resident in one State can be sent to an asylum maintained by another State, only with the consent of the latter State. It is in the larger interest of the nation to retain this subject in the Concurrent List.

2.20.04 **Entry 17—List III.—**"Prevention of cruelty to animals". *Prima facie,* this subject appears to be mainly local in character. On further reflection, it can be said that it is not bereft of inter-State implications, altogether. It may even assume international dimensions. The question of preventing cruelty to animals has now received international recognition. For instance, some years back, wild monkeys in India were caught *en masse* and packed like sardines in congested crates and exported to foreign countries for scientific experiments. Many of them died in transit. The rest were subjected to cruel or lethal experimentation. In such cases where the cruelty is committed in transit in the course of inter-State or international trade, or, in the importing country, the matter assumes not only national but even international dimensions. No specific difficulty arising out of the operation of this Entry in the context of Union-State relations has been brought to our notice. There is, in our view, no valid reason for an amendment of the Constitution for this purpose.

21. GROUP IV

2.21.01 Entries 8, 10, 11, 19, 20A, 22, 23, 24, 35, 38 and 39 of List III are covered by this group. The broad argument is that the transposition of these Entries to the State List would be conducive to greater administrative efficiency, because the State Governments are in a better position to appreciate the needs in respect of these matters which are administered and enforced through the machinery of the States. A perusal of these Entries would show that they are not matters of exclusive State concern. They have implications and dimensions which are of an inter-State character. Some of them are of nation-wide importance.

2.21.02 **Entry 8—List III.—**"Actionable wrongs".

Actionable wrongs are civil wrongs, contradistinguished from criminal wrongs or offences which are the subject-matter of Entry 1 of this very List. Apart from the fact that the matter in certain circumstances can assume inter-State dimensions, the law on this subject in main principles, just like the criminal law, requires uniformity throughout the country. The appropriate place for this subject is, therefore, in the Concurrent List.

2.21.03 **Entry 10—List III.—**"Trust and Trustees".

The properties of a trust may be situated in more than one State. Similarly, its activities may cover several States. Suffice it to say that some aspects of the subject-matter of this Entry are of significance for the country as a whole. We cannot, therefore, support the proposal for transfer of this Entry to the State List.

2.21.04 **Entry 11—List III.—**"Administrators-general and official trustees".

An Administrator-General may have concern with the properties and assets situated in more than one State, belonging to the same deceased person. His functions, in such cases, have inter-State or national dimensions. This is illustrated by Section 20 of the Administrators-General Act, 1963. Under this Section, the probate or letters of administration granted to the Administrator-General of any State shall have effect over all the assets of the deceased situated anywhere in India (excepting-Jammu & Kashmir) and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, throughout the territory of India. A provision like that of Section 20, ensuring uniformity throughout the territory of India on this aspect of the subject, would be inherently beyond the competence of the State Legislatures. By its very nature, the subject-matter of Entry 11, List III is not one of exclusive concern of the States. We cannot support the suggestion for its transposition to the State List.

2.21.05 **Entry 19—List III.—**"Drugs and poisons, subject to the provisions of Entry 59 of List I with respect to opium".

Control of production, trade and use of drugs and poisons is an important component of the subject of this Entry. This matter is not purely of local or State concern. For instance, spurious drugs manufactured in one State may be despatched and sold in another State and there consumed with harmful or fatal effects. In such cases, a law of the State of despatch, owing to its territorially limited operation, cannot effectively

prevent or penalise the mischief committed in the State of destination. Only a Union law, having operation throughout the territory of India, can effectively deal with such inter-State problems.

2.21.06 Another closely associated aspect of the subject-matter of Entry 19, List III is drug-trafficking and drug addiction. This evil has assumed not only national but global dimensions. Its network is no respector of international frontiers. Dope-trade is run like a multi-national concern. The control over production, supply and distribution of narcotics and the financing of this illicit business is in the hands of international syndicates. Drug trafficking induces and promotes drug addiction in a big way. Habitual use of drugs like heroin, smack, L.S.D. has a devastating effect on the mental and physical health of the user. Large scale drug addiction may condemn a whole generation of people to a vegetative existence, and thus undermine the health, defence capability, intellecutal advancement, economic development and progress of a nation. To highlight these dangers which the evil of drug-trafficking poses, Colombia calls it “drug terrorism”. Several countries have launched relentless campaigns against this evil. Initiatives have also been taken for a coordinated crusade at the international level against trafficking and use of dangerous drugs. Being the large producer of opium in the world, India has always maintained a steady “interest” in this area of United Nations activity. India was a party to all important inter-national treaties and conventions in the field of drug abuse control.

2.21.07 It may be noted that Entry 19, List III has been expressly made subject to Entry 59, List I which comprises: “Cultivation, manufacture, and sale or export, of opium”. Heroin and smack which are two of the dangerous drugs generally peddled by the drug traffickers, are derivatives of opium. In sum, the subject-matter of Entry 19, List III, has important aspects of national and international significance. This matter cannot, therefore, be allocated to the exclusive legislative sphere of the States. We cannot, for these reasons, support the suggestion for transfer of this Entry to List II.

2.21.08 **Entry 20A, List III—**“Population Control and Family Planning.”

Only one State Government has suggested that this Entry should be transferred to the State List. According to them family planning facilities should be an integral part of the health facilities which is a State subject and the present dichotomy between the two facilities hampers their adequate integration.

Population control and family planning are a vital part of the national effort at development. This Entry was inserted by the Forty-second Amendment to the Constitution recognising the importance of this matter. It is well known that a significant part of the fruits of development is neutralised by the high growth in population. With more mouths to feed, less savings are available for development. Large addition to the population has its impact on every aspect of the nation's life. Many of the ills of the society can be traced back to large numbers who are unable to find a rewarding employment. It is necessary to recognise this inter-dependence between family planning and other sectors. We are, therefore, of the view that Population Control and Family Planning is a matter of national importance and of common concern of the Union and the States.

2.21.09 **Entry 22, List III—**“Trade unions; industrial and labour disputes”.

Entry 23, List III—“Social security and social insurance; employment and unemployment”.

Entry 24, List III—“Welfare of labour including conditions of work, provident funds, employer’s, liability, workmen's compensation, invalidity and old age pensions and maternity benefits”.

These three Entries relate to subjects of social welfare. They have nexus with the Directive Principles of State Policy contained in Articles 38, 39, 42 and 43. These Directives are addressed to the Union and the States, jointly. These are matters of common Union-State interest having important aspects of nation-wide significance. It is, therefore, not correct to say that the transposition of these items to List II would be conducive to better and effective administration of these subjects. Rather, it may lead to a contrary result. State laws on these subjects would be unable to deal with their inter-State aspects or implications.

2.21.10 **Entry 35, List III—**“Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied”.

The suggestion of a State Government is that while taxes on mechanically propelled vehicles are a State subject under Entry 57 of List II, the jurisdiction for determining principles of such taxes should also be

under State's jurisdiction, instead of keeping it in the Concurrent List. Entry 57 of List II (relating to taxes on vehicles, whether mechanically propelled or not, suitable for use on roads including tramcars) is expressly subject to Entry 35 of List III. This is to say, if there is an existing law or a law made by Parliament, laying down under Entry 35 of List III, the principles on which the tax on mechanically propelled vehicles should be levied, the law made by a State Legislature under Entry 57, List II must conform to those principles. If the law made by Parliament does not indicate the principles relating to

taxation on mechanically propelled vehicles, the power of the State Legislatures to tax such vehicles would remain unfettered.

2.21.11 The main object of including the subject-matter of Entry 35 in the Concurrent List is to enable Parliament to regulate the exercise of the taxation power of the States with respect to mechanically propelled vehicles. If a law laying down such principles is made by Parliament under this Entry, any State law imposing tax under Entry 57 of List II on principles repugnant to those laid down by Parliament, shall be rendered invalid to the extent of repugnancy, by Article 254(1).

2.21.12 To give an example, the Union Government has been able to obtain the agreement of all State Governments to the charging of the same composite fee in lieu of the tax payable by the holder of a national permit for plying motor-vehicles. In pursuance of this agreement, the individual State Governments have to prescribe the agreed rate by suitably amending their respective Motor Vehicular Taxation Acts. In this case, a law of Parliament under Entry 35 of the Concurrent List has not been found necessary. Nevertheless, the Entry underlines the need for initiative by the Union in the matter of ensuring uniformity in principles of taxation and related policies in the various States so as to facilitate smooth inter-State and inter-regional freight traffic by road. We are, therefore, of the view that the Entry in question should continue in the Concurrent List without any change.

2.21.13 **Entry 39, List III—**"Newspapers, books and printing presses." This Entry does not relate purely to a local matter of exclusive State concern. Its dimensions and implications extend beyond the boundaries of individuals States. Some periodicals, magazines and newspapers have circulation throughout or over a large part of India. The rationale of putting this subject-matter in the Concurrent List is obvious. We are unable to support the demand for transposition of this Entry to the State List.

2.21.14 **Entry 38, List III—**"Electricity".

One State Government has complained that taking advantage of the entire field of electricity being at present a Concurrent subject, the Union Government is steadily taking over this sector. It is argued: "The States are greatly hampered in electricity development as all their projects, including even small projects, need Centre's approval. This often takes years and seriously delays development. This is an important contributory factor to varying degree of chronic power deficit suffered by most States." On these premises it suggests that the subject be divided into two parts. While electricity generation and high voltage transmission (110 Kv. and above) by public utilities may remain a Concurrent subject, low voltage transmission (below 110 Kv.) distribution and rural electrification and captive power plants may be made an exclusive State subject. Finance of electricity development may be a Concurrent subject. To give effect to these suggestions, it is urged that a new Entry 25A be added to the State List and Entry 38 of the Concurrent List be appropriately modified.

There is need for ensuring uniform standards all over the country in regard to production, supply and distribution of electricity, irrespective of voltage levels. We are in agreement with the view that the States should have adequate powers for sanctioning of various schemes for generation and transmission. We have considered this aspect in detail in the Chapter on "Economic and Social Planning" and have recommended periodic review of the norms for approval of schemes by the Union Government, Central Electricity Authority and the Planning Commission.

22. *GROUP V*

2.22.01 **Miscellaneous—**Suggestions relating to Entries 5, 26, 33, 34, 36, 37, 40, 27 and 45 of List III are dealt with in this group.

2.22.02 **Entry 5, List III—** "Marriage and divorce; infants and minors; adoption, wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law."

It is suggested by two State Governments that this Entry may be transferred in its entirety to the State List. One of them has observed that the subject-matter concerning the Entry has a positive impact on the personal law of the subjects of the State which undoubtedly varies from State to State.

2.22.03 Before the adoption of the Constitution, most of the personal law of the Hindus, who constitute the bulk of the population of India, in matters of marriage divorce, adoption, succession, joint family and

partition etc. was uncodified. There were several schools of the Hindu law which varied from region to region. Local customs could also outweigh and modify the text of the Hindu Law. There was thus a bewildering uncertainty and diversity. The main object of including the subject-matters of this Entry in the Concurrent List obviously is to enable Parliament to remove this disconcerting unpredictability in personal law and secure a measure of uniformity on its macro-aspects throughout the country. Several steps have already been taken by Parliament in this direction. Acts relating to several aspects of the Hindu Law, such as succession, marriage, divorce, have been enacted by Parliament. Thus a significant advance has been made towards the goal set out in Article 44. This Article directs: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". Transfer of the matters comprised in Entry 5 to the State List would halt further progress towards the goal. It might even reverse it. In any case, the macro-aspects of these matters are of nation-wide significance. They cannot be assigned to the exclusive State sphere. Their appropriate allocation could only be to the sphere of Concurrent jurisdiction of the Union and State Legislatures. The proposal for transfer of these matters to the State List is not sound. It is not possible to support it.

2.22.04 **Entry 26, List III—**"Legal, medical and other professions."

A bald demand, unsupported by reasons, has been made for transfer of this Entry to the State List.

2.22.05 Article 19(g) guarantees the fundamental right of the citizens of India to practise any profession, or to carry on any occupation. Clause (e) of the same Article protects the right of the citizens to reside and settle in any part of the territory of India. The field of practice available to a member of the legal or medical profession is not restricted to the territorial limits of the State wherein he for the time being resides. The activities of persons practising these professions may extend throughout the country. Considered from this stand-point, the subject matters of this Entry is not of exclusive concern of the States. Hence, it has been rightly included in the Concurrent List.

2.22.06 **Entry 33, List III—**"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."

This Entry is linked with Entries 26 and 27, List II, which are as follows:

"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."

2.22.07 The suggestion of one State Government is that the words "subject to the provisions of Entry 33 of List III" may be omitted from both Entries 26 and 27, the remainder of Entry 26 and Entry 27 may be combined with the Transferred Entry 33 of List III, after omitting from clause (a) of the latter the words "where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest". The recast Entries 26 and 27 of List II would read thus:

"26. Trade and Commerce within the State including trade and commerce in—

(a) the products of any industry and imported goods of the same kind as such products;

(b) foodstuffs including edible oilseeds and oils;

(c) cattle fodder, including oil-cakes and other concentrates;

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

(e) raw jute."

"27. Production, supply and distribution of goods including the production, supply and distribution of—

(a) the products of any industry 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;

Another State Government has stated that there is no reason why trade and commerce within a State may not be in the exclusive jurisdiction of that State. They are of the view that the only reasonable exception to this might be the inputs of Defence and War industries within the purview of Entry 7 of List I and therefore trade and commerce in these inputs may be put in the Concurrent List to ensure uninterrupted flow to production units. Modification to Entries 26 and 27 of List II have been accordingly suggested, but deletion of Entry 33 of List III in its entirety has been proposed.

2.22.08 The original Entry 33 of List III did not contain clauses (b), (c), (d) and (e). The last Limb of clause (a) *viz.*, "and imported goods of the same kind as such products" was also not there. This limb and clauses (b) to (e) were inserted by the Constitution (Third Amendment) Act, 1954.

2.22.09 A perusal of Entry 33 would show that the matters comprised in it are not of exclusive concern either of the State or of the Union Some aspects of these matters are primarily of State concern, while others are of common Union-State concern. There can be no sharp distinction or division between these aspects. A certain amount of flexibility in the distribution of these matters between the Union and the States is not only unavoidable but desirable. That is why some aspects of these matters, supposed to be of dominant State interest were included in Entries 26 and 27 of List II and were made subject to Entry 33 of List III containing other aspects of the same matters considered to be of Union-State common interest.

2.22.10 Clause (a) of Entry 33 has an inter-face with Entry 52 of List I. We have discussed the problems relating to industries, in the context of Union State relations, in details in a separate Chapter.[41] We have concluded that, in our view, no change or amendment of the language of Entry 52 of List I or Entry 24 of List II is called for. It would follow that the Union cannot divest itself of the power to regulate trade and commerce in, and the production, supply and distribution of, products of any industry which has come under its control by virtue of a law of Parliament. It is not, therefore, possible to support the suggestion that this power should be entirely with the States. We are of the view that clause (a) of Entry 33 of List III should continue in its present form in that List.

2.22.11 We have also discussed the problems bearing on Union-State relations regarding trade and commerce in and, production, supply and distribution of, essential commodities of the kind mentioned in clauses (b), (c), (d) and (e) of this Entry in the Chapter on "Food and Civil Supplies"[42]. It is sufficient to reiterate here that the Union should continue to play an overall supervisory and regulatory role in the production, supply and distribution of these commodities. Supply and distribution of these essential commodities is a problem that has assumed national dimensions. The retention of these matters in List III is fully justified in the larger interest of the country.

2.22.12 One of the State Governments (presumably in the alternative) has raised certain issues relating to the functional aspect of these matters. It has urged that "the State Government or its agencies should be permitted to purchase levy paddy and rice from the surplus States without interference by the Centre", and "the Reserve Bank of India should charge concessional rate of interest in this regard". It has also urged that "in the interest of effective control over the roller flour mills and ensuring proper production and distribution of *maida* and *sooji* to consumers, it is but necessary that the licensing powers of roller flour mills are again vested with the State Governments, subject to general guidelines from the Government of India." It further goes on to suggest that "if the power to grant exemption from ceiling on stocks of pulses, in cases where the genuineness is satisfied, is vested with the State Governments without reference to the Government of India, it will do a lot of good to dealers besides making pulses available in plenty to the

consumers at reasonable price". It wants that the power of appointing new wholesale dealers in kerosene should be with the State administration. These issues, mainly of an administrative nature, have been dealt with in the Chapter on "Food and Civil Supplies".[43]

2.22.13 **Entry 34, List III—**"Price control".

There was no item corresponding to this Entry in the Legislative Lists of the Government of India Act, 1935. Entry 29 of List II in the Seventh Schedule to that Act, referred, *inter alia,* to distribution of goods. It was held by the Calcutta High Court that fixation of price was involved in regulating the distribution of articles under this Entry 29.

2.22.14 To clarify the position, the Constitution has made 'price control' a specific item in the Concurrent List. However, the fact remains that 'price control' is closely connected with the regulation of "trade and commerce in, and the production, supply and distribution" of certain industrial and agricultural products mentioned in Entry 33, List III. The reasons given by us for not favouring the suggestion for change and transfer of a good portion of Entry 33, List III and List II, apply equally to demand for transposition of this item to List II. No reason for the proposed transfer of this Entry to List II has been given. It is a well-known fact that, whenever the country or a part thereof suffers from scarcity of essential commodities or products, country-wide unethical trade practices and black-marketing make their ugly appearance in a menacing form cutting across State boundaries. Overall price control is essential not only to curb such evil practices but also to ensure Inter-State distribution of scarce goods and essential foodstuffs on an equitable basis to the people of all the States. This function can be best performed through concerted coordinated action of the Union and the States. This is the rationale of including 'price control' in List III. We find no justification for suggesting its transfer to List II.

2.22.15 The State Government has, however raised certain issues relating to the functional aspect of Entry 34 of List III. It has contended that "in the matter of fixation of procurement price, the previous approval of Central Government is not necessary". It has further pointed out that "several schemes in the course of education, obliteration of illiteracy, Nutritious Noon-Meal Scheme (feeding about 84 lakhs of childern and old age pensioners) have been conceived for the first time in the country by the Hon'ble Chief Minister". In this connection, it has suggested introduction of a "subsidised control of prices for essential commodities for continuance of such welfare schemes such as the Nutritious "Noon-Meal Scheme". These problems relating to the administrative aspects of 'price control' have been dealt with in the Chapter of "Food and Civil Supplies"[44].

2.22.16 **Entry 36, List III.—**"Factories".

Entry 37, List III—"Boilers".

A State Government has suggested that these two Entries should be transferred to List II as they have an impact on the development activities of a State including setting up of industries etc. Another State Government has proposed that in line with their suggestion for limiting the scope of Entries 7 and 52, List I, the two Entries 36 and 37 of List III may be shifted to List II. A glance at the Factories Act would show that it makes provisions for the safety, health and welfare of workers in factories. It prohibits employment of young children below 14 years in any factory. It prohibits employment of women in factories except between 6 AM and 7 PM. The Boilers Act defines "boiler" as any "closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure". Sometimes owing to defects of manufacture or wrong handling, boilers used in factories or in engines, leak or burst or otherwise cause accidental injuries to workers or their users. The Boilers Act secures uniformity throughout India in all technical matters connected with boilers with a view to preventing accidents. Non-compliance with the requirements of this Act have been made criminal offences carrying penalties. The root-cause at an unsafe boiler *viz.,* manufacture may be located in one State and the mischief or harm due to it may take place in another State. It is thus clear that the object of putting Entries 36 and 37 in the Concurrent List is to enable Parliament to secure by law a measure of uniformity in these matters throughout the country. There is no case for transfer of these Entries to the State List.

2.22.17 **Entry 40, List III—**"Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance." In paras 2.10.69 to 2.10.76 we have already dealt with the suggestion that this Entry, along with Entry 67 in List I, should be transferred to List II. We have explained there why we cannot support the proposal.

2.22.18 **Entry 27, List III—**"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."

A State Government has recommended that the expression "by reason of setting up of the Dominions of India and Pakistan" may be omitted. However, it has not given any reasons for so deleting the same. Another State Government, while urging the deletion of these words, has suggested that the Entry may be modified as under:

> "Relief and rehabilitation of persons displaced from their original place of residence in foreign countries and territories or in other States and Union Territories."

This Entry is a specific provision intended to cover a situation created by partition of the country at the time of Independence. The Constitution expressly recognises the need for providing relief to and rehabitating persons displaced from Pakistan, even though they could not technically be called at that point of time, citizens of the country. We have carefully considered the suggestion of the State Government. If the expression "by reason of setting up of the Dominions of India and Pakistan" is omitted, then the scope of the Entry becomes wide open and could cover all aliens coming to India at any point of time. This could possible lead to a large influx of foreigners into this country with all its undesirable consequences. Indeed, serious problems have already arisen in certain part of India due to continuous influx of persons from outside into this country. The Citizenship Act (1955) has been recently amended, tightening up the qualifications by which a person can become a citizen of this country. We are of the view that the suggested deletion could become a source of considerable difficulty and, therefore, cannot be supported.

As regards the suggestion for inserting 'persons displaced from other States and Union Territories' in this Entry, we feel that it is unnecessary. There are other provisions, such as Article 282, which give ample discretionary powers to the Union as well as the States to make grants for any public purpose. Entry 42, List III gives power to the Union and the States to acquire property (including Land) for any public purpose.

2.22.19 **Entry 45, List III—**"Inquiries and Statistics for the purposes of any of the matters specified in List II or List III."

The first preference of one State Government is that this Entry should be omitted from the Concurrent List. In the alternative, it is suggested that the Entry should be recast as follows:

Inquiries and statistics for the purpose of any of the matters specified in List II or List III but not including inquiries in respect of the conduct of any Minister of a State Government while in office or after demitting offfice."

Another State Government has argued that there is no justification why inquiries and statistics for the purposes of any of the matters specified in List II may be in the Concurrent List and has suggested that Entry 45 of List III may be limited. to enquiries and statistics for the purposes of any matters specified in List III.

2.22.20 In support of its suggestion, the State Government has advanced these arguments:

> "This entry has been interpreted by the Courts so as to enable Parliament to order a commission of inquiry in respect of matters exclusively falling within the State legislative field. In fact, the validity of the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952) has been justified with reference to this entry. The power under the Commission of Inquiry Act in respet of the conduct of the Ministers of a State Government even while in office has been resorted to by the Central Government purporting to exercise the powers under the Commissions of Inquiry Act, 1952. In a Federal set up, it is inconceivable that the Central Government should have the power to order a Commission of Inquiry in respect of the conduct of State's Ministers while in office or in respect of the past conduct of the Ministers. It is, therefore, necessary that Parliament should have no power to order an inquiry in respect of the conduct of Ministers of State Government. This aspect assumes very great importance in the context of different ruling parties at the Centre and at the State level. Almost in all cases, the Central Government has resorted to order a Commission of Inquiry into the conduct of Ministers of the State Government when

the State Government is headed by a Chief Minister belonging to a party different from the ruling party at the Centre."

2.22.21 The object sought to be achieved by the proposed changes, is that "Parliament should have no power to order a Commission of Inquiry in respect of the conduct of a Minister of a State Government

while in office or after demitting "office". The State Government has suggested a new Article 246A declaring that Parliament shall not have this power.

2.22.22 Parliament passed the Commissions of Inquiry Act, 1952. The Act came into force on 1-10-1952. Section 2 defines the "appropriate Government" as (i) the "Central Government in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution"; and (ii) the "State Government in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution". Section 3 empowers the appropriate Government to appoint a Commission of Inquiry. It is bound to appoint such a Commission if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State. The purpose of appointing a Commission under this Section is to make an inquiry into any definite matter or public importance. The proviso to this Section says that where any such Commission has been appointed to inquire into any matter—

(a) by the Central Government, no State Government shall except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government, is founctioning;

(b) by a State Government,. the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

Sections 4 and 5 enumerate the powers of a Commission.

2.22.23 The *vires* of the Section 3 of this Act was challenged before the Supreme Court in *State of Karnataka* v. *Union India* in Shri Devraj Urs's case.[45] The Supreme Court, by a majority, held that the expression "inquiries" in item 45 of List III covers all inquiries for the purpose of any of the matters specified in List II or List III. The language used *viz.* "any of the matters specified" is broad enough to cover anything reasonably related to any of the enumerated items even if done by holders of Ministerial offices in the States. In the alternative, it held that even if neither Entry 94 of List I nor Entry 45 of List III would cover inquiries against Ministers in the States relating to acts connected with the exercise of Ministerial powers, Article 248, read with Entry 97 of List I, must necessarily cover an inquiry against Ministers on matters of public importance whether the charges include alleged violations of criminal law or not.

2.22.24 The judgement of the Supreme Court in the *Karnataka case* continues to be the subject of serious debate in legal and political cricles. We do not want to enter into this controversy. But one startling result which might flow from the interpretation put by the Court on Entry 45, List III, is that, if it is permissible for the Union Government by virtue of the Commissions of Inquiry Act passed under this Entry, to appoint a Commission of Inquiry to investigate into charges of misconduct or corruption against Ministers of a State relating to any of the matters in List II or List III, on parity of reasoning, a State Government also, is competent to set up a Commission for inquiring into charges of corruption against Union Ministers in respect of any matter in List II, if not in respect of any matter in List III also.

2.22.25 The interpretation of Entry 45, List III given by the Supreme Court highlights the potentiality of this extraordinary power for misuse by the two levels of government by initiating mutually recriminatory inquiries through the Commissions set up by them against each other. However, the mere fact that this power is capable of being misused, is no ground for amend-ing the Constitution. It will be a case for providing appropriate safeguards against the misuse of this power in the Commissions of Inquiry Act, itself. Such safeguards can be—

(i) that no Commission of Inquiry against an incumbent or former Minister of a State Government on charges of abuse of power or misconduct shall be appointed by the Union Government unless

both Houses of Parliament, by resolution passed by a majority of members present and voting, require the Union Government to appoint such a Commission,

OR

The Minister or Ministers concerned request in writing for the appointment of such a Commission; and

(ii) no Commission of Inquiry shall be appointed to inquire into the conduct of a Minister (incumbent or former) of a State Government with respect to a matter of public importance touching his conduct while in office, unless the proposal is first placed before the Inter-Governmental Council (recommended to be established under Article 263)[46] and has been cleared by it.

As regards the suggestion that Entry 45, List III may be limited to inquiries and statistics for the purposes of List III only, we have noted earlier that it is inevitable that Entries in List II may have an interface with Entries in List I and List III. The objective sought to be achieved by initiating inquiries in to matters in List I and/or List III may be frustrated if the matters in List II are also not covered by Entry 45 of the Concurrent List. We are, therefore, unable to support the suggestion for the modification of this Entry.

2.22.26 For all these reasons, while appreciating the apprehensions of the State Government with regard to the potentiality of this power for misuse, we would decline to support their proposal for amendment of Entry 45 of List III and for insertion of the suggested Article 246A in the Constitution.

2.22.27 We recommend that appropriate safeguards on the lines indicated above, be provided in the Commissions of Inquiry Act 1952 itself, against the possible misuse of this power, while appointing a Commission to inquire into the conduct of a Minister or Ministers of a State Government.

2.22.28 Our observations with regard to the suggestions of the State Government for transfer or modification of a large number of Entries in the Concurrent List to the State List apply *mutatis mutandis* to the wide-ranging demand of a Regional Party for transfer of all but seven entries of the Concurrent List to the State List. Indeed, these demands, in their totality, would substantially truncate the basic scheme of distribution of powers between the Union and States, and considerably weaken the Constitutional capacity of the Union to ensure a uniform, integrated policy on basic issues of national concern.

23. *EXTENT OF A CONCURRENT SUBJECT TO BE OCCUPIED BY UNION*

2.23.01 After a careful analysis and examination of the Entries in the Concurrent List, we have come to the conclusion that good enough case does not exist for amending the Constitution to transfer any Entry in the Concurrent List to the State List. However, we may recall the general complaint of the States that the Union has evinced a tendency to occupy needlessly excessive field of the Entries in the Concurrent List as if it were a second Union List. Such comprehensive occupation of the concurrent field, it is contended, results, by the operation of the rule of repugnancy contained in Article 254, in excessive attenuation of the legislative power of the States with respect to matters in List III.

2.23.02 In examining this issue it would be advantageous to begin by recapitulating that matters in the concurrent List are those which are of common interest to both the Union and the States. The need for Union legislation may arise for the following reasons:

(1) Need to secure uniformity in regard to the main principles of law throughout the country.

(2) The subject matter of legislation may have inter State, national and even international, aspects and the 'mischief' emanating in a State may have impact beyond its territorial limits.

(3) It may be important to safeguard a fundamental right, secure implementation of a Constitutional directive or, (4) Coordination may be necessary between the Union and the States and among the States as may be necessary for certain regulatory, preventive or developmental purposes or to secure certain national objectives.

2.23.03 There are over 250 Union Statutes (including Existing Central Laws relating to the various matters in the Concurrent List. These cover a very wide spectrum. At one end stands the Forest (Conservation) Act, 1980 where in respect of diversion of reserved forest land to other uses there is no discretion whatever left to the States. At the other end is the Electricity (Supply) Act, 1959 wherein the States have been delegated most of the powers. The extent of occupation of the field in the public interest

would depend on the requirements in a particular case and may even vary from time to time. Indeed, needless occupation of the field by the Union, may create avoidable difficulties in the achievement of the objective in view. Our study of the Essential Commodities Act, 1955 (ECA), an enactment relatable to Entries 33 and 34 of List III, will be found in Chapter XVI on "Food and Civil Supplies". In that Chapter, one would notice the advantages and disadvantages of having an exhaustive Union code on a Concurrent List matter. In the case of the ECA, one distinct advantage is that it empowers the Union Government to

monitor the production, availability etc. of essential commodities in the different parts of the country, so that prompt action can be taken in the event of a crisis anywhere. The ECA also facilitates the planning, on a national basis, of production, supply, distribution etc. of foodgrains and other essential commodities. However one major short-coming is that, in order to be able to deal with the problems of food and civil supplies in their States, the State Governments have to be delegated adequate powers by the Union Government under the ECA. We have observed therein that there is a case for delegation of enhanced powers to the State Governments under the Act and this problem requires to be reviewed periodically by the Union Government in consultation with the State Governments. In dealing with the matters enumerated in Entries 33 and 34 of List III, it is of utmost importance that the large diversity in the local situations is taken into account. A higher degree of delegation may take care of some of the problems arising out of the diversity. One may wonder whether it admits of only one uniform system or plan of regulation, or very objectives sought to be achieved would not be better served by leaving that part of the legislative field unoccupied by the States where diversity or peculiarity of local situation is an overriding consideration.

2.23.04 Before enacting a Union Law in respect of a matter in the Concurrent List, it is necessary to strictly consider how important, if at all, it is that there should be uniformity in regard to the main principles of the law in respect of that matter and evaluate the deficiencies in the existing State laws which can be rectified only through a Union Law. Keeping in view the fact that the legislative powers of the States get attentuated to the extent the field of legislation is occupied by the Union, it is necessary to confine the Union Legislation only to the main aspects in the light of the relationals outlined in para 2.23.02 ante.

2.23.05 One general conclusion that can be drawn is that when there is no compulsion to occupy the field of Concurrent jurisdiction, it is necessary not to occupy the field. We, therefore, recommend that ordinarily the Union should occupy only that much field of a Concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation,leaving the rest and the details for State action within the broad framework of the policy laid down in the Union Law. Further, whenever the Union proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the State Governments, individually, but also, collectively, with the Inter-Governmental Council which, as we have recommended should be established under Article 263[47]. A resume of the views of the State Governments and the comments of the Inter-Governmental Council should accompany the Bill when it is introduced in Parliament.

24. *PART III—ARTICLES 247, 249 AND 252*

Article 247

2.24.01 The power to provide for the administration of a law is necessarily incidental to the power to make laws relating to the subject. In consonance with this principle, Article 247 empowers Parliament to establish additional courts for the better administration of Union laws relating to any matter in List I only.

2.24.02 One State Government has objected that "Article 247 is so wide that it enables Parliament to establish additional courts for the exercise of normal civil and criminal jurisdiction also during the peaceful time... as such observance of due process of law is also the responsibility of the States, this provision may be omitted". Another State Government has objected to the establishment of additional courts on the ground that these courts are a departure from the normal judicial structure envisaged by the Constitution where the same Courts administer all laws whether made by Parliament or the State Legislature. There should be no justification for setting up such courts in normal non-Emergency times. These objections possibly stem from a misapprehension of the scope of Article 247. The Article does not enable Parliament to establish courts for the administration of Union laws with respect to a matter in the Concurrent List. Administration of State laws whether they relate to matters in List II or List III are outside its purview. The

Article thus does not in any way derogate from the powers assigned to the States by the constitution. We, therefore, find no substance in these objections.

25. *ARTICLE 249*

2.25.01 Article 249 is an exception to Article 246(3). Clause (1) of the Article authorises Parliament to make law on a matter enumerated in the State List, if the Council of States (Rajya Sabha) by not less than two-third majority of the members present and voting, resolves that it is necessary or expedient in the national interest so to legislate. Clause (2) provides that such a resolution shall remain in force for a period

not exceeding one year as may be specified therein. The proviso to this clause enables the continuance in force of the resolution, if and so often a resolution approving the continuance is passed in the manner prescribed by clause (1). The life of the temporary statute extends for a period of six months after the resolution has ceased to be in force.

Effect of the Use of Article 249

2.25.02 When Parliament assumes power under this Article, the subject-matter of the Parliament legislation, in a sense, stands temporarily transferred to the Concurrent List and the exercise of the power of the State Legislatures in regard to that matter becomes subject to the rule of inconsistency laid down in Article 251.

Issue Raised

2.25.03 Four State Governments specifically, and one more State Government indirectly, have asked for deletion of Article 249. Two of them have suggested, in the alternative, that Articles 249 and 252 should be so amended that the Union Government powers to legislate on items in the State List do not exceed a period of six months each proposed legislation must first be approved by the Inter-State Council. Political parties supporting these State Governments, have also made a similar demand. One Regional Party has also made a similar demand. Some experts and public-men who appeared before the Commission, have also suggested the deletion of this Article. On the other hand, most State Governments and political parties do not find fault with the provisions of Article 249.

2.25.04 The main arguments advanced for deletion of Article 249 are : that it short-circuits the amending process prescribed in Article 368 and enables only one House of the Union Legislature to unilaterally transfer a subject from the State List to the Concurrent List. The two-thirds majority of members present and voting in the Council of States (Rajya Sabha) may not necessarily reflect the consent of the majority of the States through their representatives. The initial life of the statute, though limited to one year, may be prolonged indefinitely through successive resolutions of the Rajya Sabha and a better alternative is available in Article 252(1).

2.25.05 We have carefully considered the arguments for deletion or amendment of Article 249. These stem from fears about the possible misuse of this power. These fears have no empirical basis. The evidence before us shows that the Article has been availed of very sparingly to meet abnormal situations.

2.25.06 Article 249 was first invoked in August, 1950 “for the effective control of black-marketing”, when in pursuance of the resolution, dated August 8, 1950 of the “Rajya Sabha”, (See Foot Note 56—under paragraph 2.26.17), Parliament enacted the Essential Supplies (Temporary Powers) Amendment Act, 1950 and the Supply and Price of Goods Act, 1950. Again, in 1951, pursuant to another resolution of the “Rajya Sabha” under this Article, Parliament passed the Evacuee Interest (Separation) Act, 1951, applicable to all evacuee property including agricultural land. This Act was enacted to resolve an unusual problem relating to rehabilitation and settlement of displaced persons from Pakistan.

2.25.07 After 1951, for a period of about 35 years, this Article remained dormant. Thereafter, it was resorted to recently in August, 1986. On August 13, 1986, the council of States with the requisite two-thirds majority resolved that it was necesary in the national interest that Parliament should for a period of one year from 12th August 1986, make laws with respect to the matters comprised in six Entries in the State List, namely, Entries Nos. 1 (Public Order), 2 (Police), 4 (Prisons....), 64 (Offences against laws with respect to matters in the State List), 65 (Jurisdiction and Powers of all courts, except the Supreme Court,

with respect to matters in List II) and 66 (Fees in respect of any of the matters in List II, but not including fees taken in any court). The reasons and objects for invoking this provision, as indicated in the preamble of the Resolution, were :

> "Whereas the situation in Punjab and other areas in the north-west borders of India has become extremely grave due to infiltration from across the north-western borders and unabated terrorist activities in the border areas,....."

2.25.08 No legislation, in pursuance of the resolution, dated August 13, 1986, of the Rajya Sabha was passed by Parliament.

2.25.09 There are three in-built safeguards against the misuse of the power conferred by this Article. The first is that Parliament can assume jurisdiction only when two-thirds of the members of the Rajya Sabha present and voting pass a resolution to that effect. Secondly, the resolution is required to specify the matter enumerated in the State List, with respect to which Parliament is being authorised to legislate in the national interest. Some Entries in List II comprise a cluster of several matters. It is, therefore, open to the Rajya Sabha to limit the resolution specifically with respect to any one of those matters (which may even be a particular aspect of a matter) in an Entry. Thirdly, a resolution passed under clause (1) of the Article remains in force for a period not exceeding one year as may be specified therein unless extended for a further period not exceeding one year by a fresh resolution. A law passed in pursuance of clause (1) ceases to have effect on the expiry of six months after the resolution has ceased to be in force. It is true that these safeguards are not fool-proof. But the basic fact that, in any case, the power is to be exercised by Parliament which consists of the representatives of the people from all the States, is itself a guarantee against its misuse. There is not allegation that, when this power was exercised in 1950-51 to pass the aforsaid temporary statutes, it worked to the disadvantage of the States or the interests of their people. In the recent case, power was conferred on Parliament to legislate with respect to certain matters in the State List to meet a situation on the north-western border, which, according to the Rajya Sabha resolution under Article 249, was "extremely grave".

2.25.10 The Article provides a simple and speedy method for effective handling, at the national level, or urgent problems of an extraordinary nature which temporarily assume national significance. The Article may also be availed of in a situation in which speed is the essence of the matter, and invocation of the Emergency Provisions in Article 352 and 356 is not considered necessary or expedient. Compared with Article 249, the procedure provided in Article 252 is very cumbersome, and time-consuming. It cannot, therefore, be reasonably said that Article 252 provides an equally efficacious or a better alternative to Article 249. On the basis of evidence before us, therefore, it is not possible to say that this extra-ordinary power has been misused. It has been exercised with due restraint in extraordinary situations for temporary periods which have not been indefinitely extended by successive resolutions.

2.25.11 We do not favour the suggestion that, in addition to the requisite resolution of Rajya Sabha, the prior approval of the Inter-Governmental Council should also be a condition for authorising Parliament to legislate on a matter in the State List. In our view, it would operate as a clog on the speedy and effective use of the Article in extraordinary situations, requiring urgent action.

2.25.12 For these reasons, we cannot support the suggestion for deletion or amendment of the provisions of Article 249.

26. *ROLE OF THE COUNCIL OF STATES (RAJYA SABHA) IN RELATION TO ARTICLE 249*

Views of State Governments

2.26.01 In the preceding Section, we have referred to the suggestion of some State Governments for the deletion of Article 249. In this connection, two of them consider that there is a serious flaw in the composition of the Rajya Sabha. One of the latter has observed that, when a resolution is passed by the Rajya Sabha under Article 249 by a two-thirds majority of the members present and voting, the majority would not necessarily reflect the consent of the majority of the States through their representatives. The existing allocation of seats in the Rajya Sabha is responsible for what the State Government has termed as the short-circuiting of the amending process prescribed in Article 368. It has pointed out that a two-thirds

majority can be mustered by seven States *viz*., Utter Pradesh, Bihar, Maharashtra, Andhra Pradesh, Tamil Nadu, Madhya Pradesh and West Bengal; along with the 12 nominated members. In that event, opposition from the representatives of the remaining States will be of no avail.

2.26.02 According to the other State Governments, the seats allocated to the States in the Rajya Sabha are heavily weighed by their populations. This contrasts with the position in the U.S.A., where the States have 2 representatives each in the Senate. In the Rajya Sabha, a majority of two-thirds of the members present and voting will be available for passing a resolution under Article 249, even if it is opposed by all the members elected from the last 14 States in the list of States arranged according to the descending order of their populations. A resolution which lacks the support of almost two thirds of the total number of States, cannot be regarded as a decision of the States as such.

2.26.03 This State Government has suggested that the Rajya Sabha may have the following composition which could lend to the House the character that its name suggests :

Population of a State No. of seats to be allocated in the Rajya Sabha

(i) Upto 1 million 1

(ii) Between 1 and 3 million. . . . 2

(iii) Between 3 and 10 million . . . 5

(iv) More than 10 million. 14

Delhi and Pondicherry may be allocated one seat each.

2.26.04 The regional party supporting this particular State Government has, however, suggested that the States should have equal representation in the Rajya Sabha. It has also suggested that the diversity of nationalities and religious, linguistic, cultural and ethnic minorities should be adequately reflected in the composition of Rajya Sabha. One all-India Party and a number of other regional parties have also emphasised that all States should have equal representation in this House.

2.26.05 A third State Government has observed that the Members of the Rajya Sabha elected from the State Legislatures are not expected to override the rights of the States, except when a legislative measure being considered by them is really necessary in the national interest. Therefore, the possibility of misuse of Article 249 by the Union to encroach on the State's Legislative field is negligible.

Rajya Sabha's Role as Envisaged by the Constitution-Framers

2.26.06 The composition and functions of the Rajya Sabha were designed by the framers of the Constitution to subserve the following purposes:—

(i) securing, for the legislative process at the Union level, the thinking and guidance of mature and experienced persons, popularly known as “the Elders”, who are disinclined to get involved in the rough-and-tumble of active politics and contest in direct elections to the Lok Sabha;

(ii) enabling the States to give effective expression to their view-points at the Parliamentary level;

(iii) ensuring some degree of continuity in the policies underlying Parliamentary legislation; and (iv) functioning as a House of Parliament which would, more or less, be coordinate with the Lok Sabha, with safeguards for speedy resolution of any conflicts between the two Houses on legislation.

The above purposes were given expression to in the Constitution in the manner explained below.

The Members their back-ground and experience

2.26.07 The members of the Rajya Sabha, except for twelve of them to be nominated by the President, would be representatives of the States and elected by the elected members, of their Legislative Assemblies. The nominated members would be persons having special knowledge or practical experience in respect of matters like literature, science, art and social service (Article 80). Thus, members of the Rajya Sabha would be seasoned people, not in the thick of politics, who would lend a stamp of learning and importance to the

debates in the House. The Rajya Sabha could be expected to bestow calm consideration on the various legislative measures coming to it, particularly those that might have been some what hastily drafted and equally hastily passed by the Lok Sabha[48].

Projection of the totality of views in each State made possible

2.26.08 Elections to the Rajya Sabha from the Legislative Assembly of each State would be in accordance with the system of proportional representation by means of the single transferable vote [Article 80 (4)]. While framing the Constitution, it was decided that the strength of the Rajya Sabha would be distributed among the States, as far as possible, in proportion to their population. The scale adopted was of one representative for every whole million of the population of a State upto 5 million plus one representative for every additional 2 million [49]. Accordingly, the number of members of the individual States varies from 1 to 34, apart from 12 nominated members (vide Schedule IV). These provisions, it was

felt, would enable fair representation to be given to minorities in each State who held views different from those of the majority[50]. The members elected by a State Legislative Assembly would thus represent a fair cross-section of the views of the parties elected to the State Legislative Assembly. The Rajya Sabha would thereby be an instrument for the effective expression at the Parliamentary level of the points of view of the States[51].

2.26.09 It may be mentioned that in the constitutent Assembly, an amendment to Draft Article 67 [nowArticle 80(1)], which provided that each State should elect 5 members to the Council of States by adult franchise, was negatived[52]. One reason for not accepting the principle of equal representation for each component State in the Upper Chamber (as obtaining in the U.S.A. and Australia) was that the States of the Indian Union were not independent entities having pre-existing rights or powers anterior to or apart from the Constitution. Another reason obviously was that the constituent units of the Indian Union differed vastly in area and population. This part, the Rajya Sabha was not envisaged to function primarily as a Federal Chamber of the classical type like the Senate of the U.S.A. Apart from the representatives of the constituent units, it was to have a nominated element, also.

2.26.10 The Constitution-framers provided that the Rajya Sabha would be a permanent body not subject to dissolution. One-third of the members would retire at the expiration of every second year. This type of arrangement was designed to secure the representation of past as well as current opinion and help in maintaining continuity in public policy[53].

Upper House not to impede Legislative process

2.26.11 In order that the Rajya Sabha should not prove to be a clog to legislation and administration, the Constitution-framers provided that, in the event of a conflict between the Upper and the Lower Houses on a Money Bill, the view of the Lower House would prevail. Such amendments to Money Bills as the Rajya Sabha might suggest would be left to the Lok Sabha to accept or not to accept (Article 109). Also, no Financial Bill, including a Money Bill, would originate in the Rajya Sabha (Articles 109 and 117).

2.26.12 In regard to Bills other than Money Bills, the Lok Sabha and the Rajya Sabha would have equal powers. Deadlocks would be resolved by joint meetings (Article 108).In order that the view of the Lok Sabha should generally prevail during such joint meetings, the Rajya Sabha would have a strength not exceeding 250 members [Article 88(1)], while the Lok Sabha would have not more than 500 members chosen by direct election in the States and members representing Union Territories [Article 81(1)].[54]

Some important powers of the Rajya Sabha

2.26.13 The two Houses of Parliament have coordinate powers not only in the matter of passing Bills (other than Money Bills) but also in regard to approving a Proclamation issued under Article 352 or Article 356 or approving continuance in force of such a Proclamation. However, the Rajya Sabha does not have the power, which has been conferred on the Lok Sabha under Article 352(7), of passing a resolution disapproving a Proclamation issued under Article 352(1) or disapproving the continuance in force of such a Proclamation, thus making it obligatory for the President to revoke the Proclamation in question.

2.26.14 The Rajya Sabha has a significant power in relation to a Bill seeking to amend the Constitution. Such a Bill has to to a Bill seeking to amend the Constitution. Such a Bill has to be passed in each House of Parliament by a majority of the total membership of that House and by a majority of not less than two-

thirds of the members of that House present and voting. Should such a Bill not be passed by the Rajya Sabha for lack of the requisite majority in that House, it can neither be presented to the President for his assent nor sent to the State Legislatures for being ratified by them, where ratification by the States or the Bill is necessary (vide Article 368).

2.26.15 The Rajya Sabha has certain special powers under Articles 249 and 312, which the Lok Sabha does not possess. We have discussed the provisions of Article 249 in the preceding section. Under Article 312, Parliament may, by law, provide for the creation of one or more All India Services common to the Union and the States, provided that the Council of States has declared 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 interest so to do.

2.26.16 From the above conspectus, it is clear that the Rajya Sabha in our Constitution does not exclusively represent the federal principle. The primary role assigned to it is that of a Second Chamber of Parliament exercising legislative functions, more or less, coordinate with the Lok Sabha. However, in the

exercise of its special functions such as those under Articles 249 and 312, its role assumes a predominantly federal character. Explaining the reason for assigning this special role to the Rajya Sabha, Dr. B.R. Ambedkar said: "*Ex-hypothesi*, the Upper Chamber represents the States and therefore, their resolution would be tantamount to an authority given by the States".[55] How far, in reality, a resolution of the Rajya Sabha passed under Article 249 by a two-thirds majority of members present and voting, signifies consent of the majority of the States, is a matter which is discussed in the following paragraphs.

2.26.17 As noticed in paragraphs 2.25.02, 2.25.03 and 2.25.04 *ante*, Article 249 has been invoked during the last 37 years, only on three occasions. It was invoked first in 1950 and again in 1951, before the constitution of the Raya Sabha in 1952.[56] Article 249 was invoked again after a lapse of 35 years, only in 1986. An analysis of the voting pattern on this occasion shows that the requisite two-thirds majority did not come only from members belonging to a few populous States, who out-voted the members from the smaller States, even though the latter were larger in number.

Voting pattern in the Rajya Sabha

2.26.18 Though, in theory, the pattern of voting on a resolution moved in the Rajya Sabha under Article 249, is supposed to reflect the broad view-point or consent of the State Assemblies and their Governments, yet, in practice, it may not be invariably so. It may happen that the concerted view of the majority party in the Rajya Sabha supporting the resolution, stands, at that point of time, in direct contrast to the known views of the parties running the governments and dominating the majority of the State Legislatures. While electing members to the Rajya Sabha, members of State Assemblies vote on party lines. It is only to be expected that the members so elected would continue to owe allegiance to their respective parties and vote on party lines in the Rajya Sabha. The pattern of voting that took place on the resolution passed by the Rajya Sabha on August 13, 1986, in pursuance of Article 249, to which we have made a reference in para 2.25.07 *ante*, provides an illustration. The members who voted in favour of the resolution, comprised members belonging to the ruling party and some other parties and, in all, constituted 78 per cent of the total number of members present and voting. Also, at least one member belonging to every State voted in favour of the resolution.

2.26.19 For the past nearly two decades, parties other than the ruling party at the Union, have been in power in many States. The fact that these other parties or groups of them have been in a majority in certain State Legislative Assemblies, has had an impact on the Relative strengths of the different parties in the Rajya Sabha.

2.26.20 As a result, the ruling party and its allies have generally been having a lower percentage of seats in the Rajya Sabha than in the Lok Sabha. In fact, there were occasions when the ruling party was not able to muster the requisite two-thirds majority in the Rajya Sabha in order to pass a Constitution Amendment Bill. For example, the 43rd and 44th Constitution Amendment Acts could not have been passed in 1977 and 1978, respectively, but for the broad agreement between the ruling party, which had a majority only in the Lok Sabha, and the main opposition party, which had a majority in the Rajya Sabha.

2.26.21 The apprehension of the two State Governments and some political parties, noticed in paragraphs 2.26.01 and 2.26.02 *ante*, to the effect, that in the Rajya Sabha as at present composed, a few

bigger States can muster the requisite two-thirds majority of votes to push through a legislation or a resolution, even when a larger number of smaller States are opposed to it, is not borne out, as already noticed, by an empirical analysis of the voting pattern with respect to the Resolution passed in the Rajya Sabha in 1986 when Article 249 was invoked. Nevertheless, a remote possibility of the apprehended situation arising in future, cannot be ruled out. The problem is aggravated when the more populous States are ruled by one party, and the opposition party or parties are running the government in the smaller States. But, the question is, will the suggested changes in the composition of the Rajya Sabha, eliminate this possibility and provide a workable remedy for the alleged distortions that have come about in the role of the Rajya Sabha as an instrument effectively representing the diverse view-points of the States, particularly in the exercise of its special powers enabling Parliament to legislate with respect to a matter in the State List. In the light of the discussion that follows, the answer to this question has to be in the negative.

System of allocation of seats in the Rajya Sabha question of alteration

2.26.22 The new scale of representation proposed by one of the State Governments vide para 2.26.03 *ante,* does not seem to have been derived from any understandable criteria. All that it seeks to achieve is that States, with a population of more than 10 million get 14 seats each, while those with lesser population get a substantially reduced number. No explicable reason has been indicated for this larger gap in the representa-tion of the two groups of States.

2.26.23 As noticed in paragraph 2.26.09 *ante*, the suggestion that all the States should have equal representation in the Rajya Sabha, was not accepted by the Constitution-makers. The reasons that weighed with the Constitution-framers, in not accepting this suggestion, are as valid today as they were then. Moreover, the changes, suggested in the composition of the Rajya Sabha, will not solve the problem which has more than one dimension. In actual practice, the remedy suggested may aggravate the 'disease'. It may have deleterious effect even on the primary role of the Rajya Sabha. If the suggested scale of representation were to be adopted, besides the party in power, the numerically lesser political parties in a State Legislative Assembly, may not be able to elect and send their representatives to the Rajya Sabha. The membership of the Rajya Sabha would then cease to reflect a fair cross-section of the various parties in the State Legislative Assemblies. The demand by one of the regional parties that the diverse “nationalities” and minorities should be adequately reflected in the composition of the Rajya Sabha, would prove to be impracticable if its simultaneous demand for equal representation for all the States were to be met. Indeed, these twin demands are mutually inconsistent.

2.26.24 In sum, neither of the two proposals—one suggesting a new scale of representation and the other equal representation for the States in the Rajya Sabha, can stand close scrutiny. Neither of them would provide a fool proof safeguard against the interests or view points of the smaller States being overridden by the bigger and more populous States, *inter alia,* due to the prevailing pattern of voting on party lines. Rather, the proposed changes in the composition of the Rajya Sabha, if made, might mar its proceedings by endemic conflicts and frequent deadlocks, seriously undermining its primary role and smooth functioning as a second Legislative Chamber of Parliament. We are, therefore, unable to support any of these proposals.

2.26.25 The crux of the problem is, how to strengthen the special role of the Rajya Sabha as an instrument for effective representation of the view-points of the States? This can be best solved not by restructuring the composition of the Rajya Sabha, but by devising procedural safeguards in its internal functioning. The Rajya Sabha by its Rules of Procedure may provide for setting up of a special Committee reflecting various cross-sections of the House. This Committee shall ascertain by free and frank discussions the views of the various cross-sections of the House and thus ensure, beforehand, that a proposed resolution under Article 249 or Article 312 would be passed only on the basis of consensus. This procedural device will serve to dispell the apprehensions about the misuse of these special provisions for transferring the power otherwise belonging to the smaller States to the Union with the support of numerically larger votes of a few bigger States which are under the control of the party in power at the Union, and will thus ensure the exercise of these special powers by the Rajya Sabha in accordance with the principles of cooperative federalism.

27. *ARTICLE 252*

2.27.01 Clause (1) of Article 252 provides that if the Legislatures of two or more States by a resolution desire that Parliament should by law regulate in those States a matter in the State List, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution of its Legislature.

Clause (2) of the Article provides:

"Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State" (emphasis added).

Effect of the operation of clause (1)

2.27.02 The underlined words indicate that the State Legislatures will have no power to repeal or amend an Act of Parliament relating to a State subject, passed or adopted in the manner provided in clause (1). It may be amended or repealed only by Parliament in the manner laid down in clause (2).

The effect of the operation of clause (1), is, that the State Legislature ceases to have power to make laws on the subject to the extent its field is covered by the resolution under clause (1), although the matter continues to be in List II. It has been held [57] that any Act of the State Legislature will be subject to the principle of repugnancy, though Article 254, in terms may not apply. If any State Act relating to the same matter, occupying the same field as the law made by Parliament under clause (1), is repugnant to the latter, it will be rendered inoperative to the extent of repugnancy.

Instances of Acts passed under Article 252

2.27.03 Article 252 has been invoked a number of times. Some important instances of legislations by Parliament under this Article are:

(i) Estate Duty Act (34 of 1953)—in its application to agricultural land.

(ii) Prize Competition Act (42 of 1955).

(ii) Prize Competition Act (42 of 1955).

(iii) Seeds Act, 1966 (54 of 1966).

(iv) Water Preservation and Control of Pollution Act, 1974 (6 of 1974).

(v) Urban Land Ceiling and Regulation Act, 1976 (33 of 1976).

(vi) National Capital Region Planning Board Act, 1985 (2 of 1985).

Issues Raised

2.27.04 Only one State Government has suggested deletion of Article 252. It has pleaded that the States must themselves enact legislation on matters in the State List. It has argued that if coordination between two or more States is necessary with respect to legislation on a particular matter, this may be arranged through the medium of the Zonal Council or the Inter-State Council. The Union Government might also help by framing model legislation on that matter. According to it, "a possible, though less satisfactory, alternative to omission of Article 252 may be" to substitute the following for clause (2) of Article 252:—

"An Act so passed may be amended or repealed only by an Act of Parliament passed or adopted in like manner, but as respects any State to which it applies it may also be amended or repealed by an Act of Legislature of that State."

None else has voiced any criticism in regard to the provisions of clause (1).

The need for these provisions is obvious. It is an example of flexibility built in the scheme of distribution of powers under our Constitution. However, clause (2) of the Article, in general, and its underlined portion in particular, has come in for much criticism from most cross-sections of public opinion. In the evidence before us, there is near unanimity in regard to the need for amending clause (2) to remove the bottle-neck in the amending procedure. There is also general agreement in support of the proposal that a legislation passed under this Article should be subject to periodic review.

Clause (2) of the Article while taking away the power of the State Legislatures to amend or repeal any Act passed by Parliament with their consent under clause (1), enjoins on Parliament that if it wants to

amend or repeal such Act it can do so "in like manner" *i.e.*, in the manner similar to the one provided in clause (1). This can mean that Parliament will have authority to amend or repeal an Act passed under clause (1) of the Article, only if the State Legislatures concerned by Resolution Authorise it to amend or repeal the Act. If the State Legislatures do not give the necessary consent to amend or repeal it in the manner laid down in clause (1), neither Parliament nor the State Legislatures may have the power to amend or repeal the Act under clause (2). The resultant disadvantages, therefore, outweigh any possible advantage envisaged by the framers of the Constitution in making the provisions in question.

2.27.05 After considering the matter from all aspects, we recommend:

(i) Clause (2) of Article 252 may be substituted by a new clause providing that an Act passed by Parliament under clause (1) may be amended or repealed either by Parliament in the manner provided in clause (1) or also by the Legislature of the State to which it applies, provided no such amending or repealing legislation of the State Legislature shall take effect unless, having been reserved for the consideration of the President, it has received his assent.

(ii) Any law passed by Parliament with respect to a matter in List II under clause (1) of Article 252, should not be of perpetual duration but should remain in force for a specific term, not exceeding three years. The Act should make a provision requiring its periodic review before the expiry of its term. If, after such review, it is considered necessary to re-enact the law in its original or modified form, such law may be enacted for a period not exceeding the original term, by following the same procedure as specified in clause (1) of the Article.

28. *PART IV—MISCELLANEOUS PROVISIONS*

General

2.28.01 This part deals with miscellaneous provisions not comprised in Chapter I of Part XI of the Constitution but are found elsewhere in the Constitution. These are in Articles 3, 4, 31A, 31C, 154(2)(b)/258, 169, 269, 285/289, 286, 288, 293, 304(b), 368 and 370.

29. *ARTICLES* 3 *&* 4

2.29.01 Article 3 provides:

"Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I—In this article, in clauses (a) to (e), "State" includes a Union Territory, but in the proviso"State" does not include a Union Territory.

Explanation II—The power conferred on Parliament by clause (a) includes the power to form a new State or Union Territory by uniting a part of any State or Union Territory to any other State or Union Territory".

During the discussions in the Constituent Assembly, some Members suggested that alterations in the boundaries of the States should be carried out only with the consent of the Legislatures of the States concerned. This suggestion was turned down by the Assembly on the ground that this "would make the provisions of Article 3 very rigid and redistribution of the boundaries of States under this Article would be

very difficult, if not an impossibility; for a State will hardly agree to be divested of any area which forms part of it".[58]

Scope of Articles 3 and

2.29.02 Article 3, as it finally emerged from the Constituent Assembly, enables Parliament to make by law internal adjustment *inter se* of the territories of the States constituting the Union of India. The exercise of this power is subject to two conditions. First, that no Bill for the purpose can be introduced in either House of Parliament except on the recommendation of the President. Second, that before making such recommendation the President shall refer the Bill for ascertaining the views of the legislature of the State or States affected by the proposal in the Bill. The amendment of the Article in 1955,[59] gives the President power to specify in the reference a time-limit within which the Legislatures of the affected States would be required to communicate their views. If they fail to communicate their views within the specified time, the Bill may be introduced in Parliament, even though their views have not been ascertained.

2.29.03 Article 4 lays down that any law made under Article 3 shall provide for the necessary amendment of the First and the Fourth Schedules as may be necessary to give effect to the provisions of the law and may also contain such supple-mental, incidental and consequential matters. Clause (2) expressly

provides that no such law within the scope of this Article shall be deemed to be an amedment of the Constitution.

Issues Raised

2.29.04 Most State Governments have not asked for any change in the provisions of Article 3. However, two State Governments have suggested that prior consent of the affected State or States should be obtained before invoking Article 3. Another State has suggested that the Inter-State Council should be consulted before Article 3 is invoked. Only one State Government has suggested that this provision should be deleted. One more State Government has stated that the justification for vesting with Parliament the power to legislate with regard to name, territory, and boundary of States, if necessary even without the concurrence of the States affected, will disappear after the territory and boundary of States have been finalised on the basis of principled application of the linguistic or ethnic basis of States' reorganisation. It has suggested that, when the boundary between the two States has been finalised and the two States have made a joint declaration to that effect approved by their respective legislatures by two-thirds majority this boundary must henceforth be unalterable by Parliament except, at the request or concurrence of the two States. Likewise, any change in the name of the State shall be only on the request or concurrence of that State.

2.29.05 At the time of framing of the Constitution, the princely States had not been fully integrated. Their number was unduly large. Considerable reorganisation was anticipated. The Congress Party had for a long time supported the principle of linguistic States. But, soon after the attainment of Independence, the national leaders had second thoughts on this issue. The Dar Commission appointed by the Constituent Assembly advised against the formation of provinces exclusively or mainly on linguistic considerations. A Committee, consisting of Shri Jawaharlal Nehru, Sardar Vallabh Bhai Patel and Dr. B. Pattabhi Sitaramayya, set up by the Congress Party, endorsed the views of the Dar Commission with the reservation that "if public sentiment is insistent and overwhelming, we, as democrats, have to submit to it, but subject to certain limitations".[60] The Constituent Assembly did not find it advisable to reorganise the Provinces/States on linguistic basis in the Constitution, itself. Nonetheless, they foresaw that, under the mounting public pressures and clamour as well as on administrative considerations, the reorganisation of the States could not be indefinitely postponed. In Article 3, therefore, they provided an easy and simple method for formation of new States and alteration of the areas, boundaries or names of States constituting the Union of India at any point of time. Every reorganisation of States or formation of a new State brings in its wake a number of constitutional, legal, administrative and political problems. For tackling such problems, apart from the amendment of the First and Fourth Schedules, other *ad hoc* consequential and supplemental changes in the Constitution and the laws may be necessary. For instance, it would be necessary to make provisions for constituting the legislative, executive and judicial machinery of a new State, distribution of assets, division, allocation and integration of services, adaptation of laws etc. Article 4 enables Parliament to incorporate such 'supplemental, incidental and consequential provisions' in the reorganisation Bill, itself, and enact it by a simple majority, without going through the cumbersome procedure prescribed in Article 368 for amendment of the Constitution.

2.29.06 These Articles were invoked[61] in 1953 when Andhra State was created. Its creation necessitated several con-sequential changes, such as, refixing the representation of the existing State of Madras in Parliament, composition of its Legislature, jurisdiction of the High Court etc. Provisions for all such consequential, incidental and supplemental matters were made by virtue of Article 4, in the Andhra State Bill, itself. The Bill was passed by Parliament like any other ordinary legislation. The utility of these Articles was fully demonstrated by the passage of the States Reorganisation Act, 1956, which brought about a general reorganisation of States and reduced their total number. Apart from other consequential provisions, this Act provided for the setting up of five Zonal Councils as advisory bodies, competent to discuss matters of common interest, particularly in the field of economic and social planning. These Articles were invoked on subsequent occasions, also. In all, during the last 37 years, 20 Acts have been enacted by Parliament under Articles 3 and 4 to bring about changes in the areas, boundaries and names of States.

2.29.07 It is noteworthy that these legislations were passed either with the consent of the States affected, or on the recommendations of a Commission or Committee set up for the purpose. The proposal to make the exercise of the power of Parliament under Article 3, conditional on the consent of the Legislatures of the affected States, in our view, will make these provisions well nigh unworkable. The reasons given by the framers of the Constitution, to which a reference has been made earlier, are still a good ground for negating this proposal. Questions relating to readjustment of boundaries of some States still remain unsettled. The need for Articles 3 and 4 in their present form has not disappeared.

2.29.08 We are, therefore, of the view that the provisions of Articles 3 and 4 should be retained as they are.

30. *ARTICLES* 31*A AND* 31*C*

2.30.01 Three State Governments and some political parties have strongly urged for amendment of Article 31A(1) and deletion of its First Proviso. They have also asked for omission of the Proviso to Article 31C. The argument is that there is no justification, whatever, for discriminating between legislations passed by Parliament and those passed by the State Legislatures with regard to the subjects specified in these Articles. It is pointed out that the State Legislatures have exclusive powers of legislation with respect to matters in List II. They are independent legislative bodies, in no way subordinate to the Union Legislature. "It is equally clear"—proceeds the argument—"that the State Government is not subordinate to the Union Government in respect of matters belonging exclusively to the State sphere". It is stressed that "the Union Government cannot be permitted to sit in judgement over the policy or the constitutionality or legality of an enactment passed by a State Legislature". Another State Government has stated that a valid legislation sponsored by a State Government, if it is not altogether out of line with the prevailing ethos, should secure without undue delay the protection of Articles 31A & 31C. For this purpose, it has suggested that President's assent shall continue to be necessary to secure protection for State legislation under Articles 31A and 31C, but with respect to such legislation, the President shall be guided by the advice of the Inter-State Council and not that of the Union Council of Ministers.

2.30.02 Article 31A(1) (so far as material for our purpose) provides:

Article 31A

"31A. Saving of laws providing for acquisition of estates, etc.—(1) Notwithstanding anything contained in Article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, manag-ing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is in consistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19:

Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

2.30.03 Article 31A was introduced by the Constitution (First Amendment) Act, 1951 to validate the acquisition of Zamindaries or the abolition of Permanent Settlement without interference from Courts and to protect, with retrospective effect, laws of agrarian reform from attack on the ground that they violated the provisions of Part III (Fundamental Rights) of the Constitution. The Constitution (Fourth Amendment) Act, 1955 *inter alia* added sub-clauses (b), (c), (d) and (e) in clause (1) of the Article. Thus, after this Amendment, the scope of Artice 31A(1) has been extended to other social welfare matters, such as, taking over of management of any property, amalgamation of corporations, extinguishment or modification of rights of directors, share-holders etc. and extinguishment or modification of rights under mining leases.

Article 31C

2.30.04 Article 31C provides:

"31C. Saving of laws giving effect to certain directive principles—Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent".

2.30.05 It will be seen that if a Parliamentary legislation satisfies the conditions set out in the substantive part of Article 31A(1), or 31C, it automatically becomes eligible to protection against a challenge on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19. If, however, a legislation of a type mentioned in these Articles is passed by a State Legislature, then such protection will be available only if (in compliance with the Proviso in question), having been reserved for the consideration of the President, it has received his assent. We have discussed in detail the reason and object of these provisions in the Chapter on "Reservation of Bills by Governors for President's consideration".[62]

2.30.06 It would be sufficient to mention here that the Provisos in question enable the Union Executive to ensure (i) that the State legislation referred to the President strictly satisfied the conditions set out in Article 31A(1) or 31C, as the case may be. That is to say, the President has to ensure that if his assent is sought under the First Proviso to Article 31A(1), the legislation is clearly one providing for any of the matters specified in sub-clauses (a), (b), (c), (d) and (e) of clause (1) of the Article; and, if such assent is sought under the Proviso to Article 31C, it really seeks to implement the policy of a Directive Principle specified in Part IV; (ii) that the legislation, in effect, will not abridge or curtail the fundamental rights under Article 14 or 19, more than what is genuinely essential for achieving the object of the legislation; (iii) that there is a measure of uniformity and coordination of legislative policy and action among the States in such matters of agrarian reform or social welfare which abridge or curtail fundamental rights; and (iv) that even in abridging or curtailing fundamental rights in respect of matters covered by Articles 31A(1) and 31C, it endeavours to accord a broad equality of treatment to persons similarly situated within the ambit of the legislation.

2.30.07 The Provisos in question are a part of the Constitutional scheme of checks and balances. They are safety valves of a democratic Constitution like ours.

2.30.08 For all the reasons aforesaid, we cannot support the suggestion for deletion of the Provisos in question from Articles 31A and 31C.

31. *ARTICLE* 154(2)

2.31.01 One State Government has suggested that "Articles 154(2)(b) and 258(2) should be so amended that, if the Union were to exercise the power as contemplated in both these Articles, consent of the State should be obtained".

Scope of Article 154(2)

2.31.02 Clause (1) of Article 154 vests the executive power of the State in the Governor who exercises it either directly or through officers subordinate to him in accordance with the Constitution. Clause (2) of the Article contains a two-pronged saving provision. It lays down:

"(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor."

2.31.03 Clause (2) of Article 154 corresponds to the latter part of Section 49(1) of the Government of India Act, 1935. Section 49(1) of that Act provided that it was competent for the Federal or the Provincial Legislature to confer executive functions upon the authorities subordinate to the Governor. Sub-clause (b) of the Article clarifies that Parliament or a State Legislature can by law take away the Governor's executive power derived from clause (1) and confer it on subordinate authorities. However, those functions which are specifically vested in the Governor by some provision outside Artice 154, cannot be conferred upon any other authority. The effect of delegation of executive powers by statute to a specified subordinate authority under sub-clause (b), is that the Governor is divested of any responsibility in respect thereof. The source of the power of the delegated authority is entirely statutory and its exercise is subject to the conditions and limitations laid down in the statute. Nonetheless, the competence of Parliament or of the State Legislature to make such delegation is subject to the limitations imposed by the other provisions of the Constitution.

32. *ARTICLE* 258

2.32.01 Article 258 reads as under:

"258. Power of the Union to confer powers, etc., on States in certain cases—(1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this Article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties".

Scope of Article 258 (1) & (2)

2.32.02 It will be seen that clause (2) of the Article is analogous to sub-clause (b) of Article 154(2). It is further noteworthy that under clause (1) of Article 258, the entrustment of such functions by the President is made only with the *consent* of the State Government. But, under clause (2), the conferment is made by Parliament by law and no consent of the State Government is required for it. Of course, while exercising its power under clause (2), Parliament can act only within its own competence. Under clause (2), Parliament can delegate quasi-judicial and quasi-legislative powers for effective execution of a Union law. Such powers are also deemed to be a part of the executive power of the Union. Clauses (1) and (2) of the Article

largely overlap so far as matters with respect to which the executive functions of the Union can be delegated. However, the power of Parliament under clause (2) is *sui juris* and untramelled by anything in clause (1).

2.32.03 We have discussed, in the next Chapter on "Administrative Relations", the rationale underlying the above two clauses. As will be explained there, whenever the assistance of States is required for enforcing a law of Parliament, the enactment itself may contain provisions for the exercise of the requisite powers and duties by States, or may empower the Union Government to delegate or entrust such powers and duties to them. This mode of entrustment of powers and duties derives its validity from clause (2) of Article 258. However, where a provision of this nature is not available in a law of Parliament for entrustment of certain powers and duties, the Union Government may invoke its power under clause (1) of Article 258 to entrust those powers and duties under that law to a State with its consent.

Rationale of Article 154(2)(b) and Article 258(2)

2.32.04 The rationale of the provisions in Article 154(2)(b) and Article 258(2) is that our constitutional system does not envisage that there should necessarily be separate, parallel agencies of the Union and the States for carrying into effect their respective laws. Most Union laws, particularly those relating to matters in the Concurrent List, are executed through the machinery of the States. These provisions have been designed to obviate the necessity of constituting separate Union agencies for enforcement of Union Laws. The present arrangement under which Union laws are executed through agencies of the States, is economical, secures coordination between legislative policy and action in matters of national interest. It also strengthens national integration and cohesion. In most cases, the State Governments should have no valid objections to the conferment of Union executive power on it or its authorities by a Presidential order under clause (1) of Article 258. The only valid objection on the part of the State Government could be that it might mean extra burden on the State exchequer. This has been taken care of by clause (3) of the Article which provides that the State Government shall be paid by the Government of India such sums as may be agreed or as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of the powers and duties conferred on it or its officers, under clauses (1) and (2) of the Article.

2.32.05 For these reasons, we find no substance in the suggestion of the State Government that Article 154(2)(b) and Article 258(2) be so modified that powers thereunder are exercised by Parliament with the consent of the State Government.

33. *ARTICLE* 169

2.33.01 Article 169 of the Constitution provides as follows:

> **"169. Abolition or creation of Legislative Councils in States.**—(1) Notwithstanding anything in Article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.
>
> (2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and con-sequential provisions as Parliament may deem necessary.
>
> (3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368".

Issues Raised

2.33.02 One State Government has suggested: ".....In this Article, the word 'may' after the word 'Parliament' must be replaced by the word 'shall'. It is better to modify it in such a way as to state that Parliament shall by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of not less than two-thirds of the members of the

Assembly present and voting, unless the President refers the State resolution within fourteen days of its receipt to the Supreme Court under Article 143 for advisory opinion on the necessity or urgency of abolition or creation of Legislative Council and the Supreme Court has advised against it". Subsequently, the State Government revised its stand and asked for deletion of the words beginning with "unless the President refers" and ending with "has advised against it". In short, their revised stand is that, if the necessary resolution for abolition of a Legislative Council is passed by the Legislative Assembly of a State, it should be mandatory for Parliament to pass a law abolishing the same. It is argued that the Union Executive is not entitled to sit in judgement over the resolution of a State Legislature for abolition or creation of a Legislative Council. But it is bound to move the Bill in accordance with the Resolution before Parliament. Another State Government has stated that the Legislative Assembly, the popularly elected house of the State, has no power by itself to create or abolish the Legislative Council, no matter how strong is the support among the Assembly Members for this. The State Government is obliged to move the Parliament for undertaking the necessary legislation to implement the Assembly resolution. It has, therefore, pleaded that Article 169 be amended to empower the Legislative Assembly of the State, to itself create or abolish the Legislative Council, by law passed by a majority of total membership of the Assembly and by a two-third majority of Assembly members present and voting.

2.33.03 The practice followed by the Union Executive in the past, on receipt of such resolutions of the State Assemblies, does not show a uniform pattern. While the Union Government had promptly introduced

Bills to implement the Resolutions of the Legislative Assemblies of Punjab and West Bengal for abolition of their Legislative Councils, it had declined to do so when the Resolutions of the Assemblies of Uttar Pradesh and Bihar were received for abolition of the Legislative Councils in those States. It also did not agree to move a Bill in accordance with the Resolution of Punjab Legislative Assembly for recreation of a Legislative Council for that State. The absence of a settled policy to be followed by the Union Executive in this matter generates controversy and friction between the Union and the States.

2.33.04 It is clear that the word "may" used in clause (1) of Article 169 imports a discretion to accept or reject the resolution of the Legislative Assembly of a State for abolition or creation of Legislative Council. But this discretionary power belongs to Parliament and not to the Union Executive.

It is, therefore, not proper for the Union Government to withhold presentation of such a resolution to Parliament and reject or decline it at their own level.

2.33.05 The mere fact that the correct procedure with respect to such a resolution of a Legislative Assembly is not being followed, is no ground to substitute the word "may" by "shall" in clause (1) of the Article. The word "may" has been deliberately used by the Constituent Assembly. There may be situations where abolition or creation of Legislative Council may not be proper in the peculiar circumstances of the case. In some States there may be important linguistic or ethnic minorities which are provided representation in the Legislative Councils, though it may not be possible for them, under our majority rule system of elections, to get elected to the Legislative Assembly. Conversely, due to migration of some minorities or groups of persons from one State to another, the cultural or ethnic configuration of the population may not be reflected in the Legislative Assembly, and the State may be economically affluent to support a second Chamber. Furthermore, acceptance of any such resolution of a Legisla-tive Assembly would require consequential and supplemental changes which, in substance–though not in law–amount to an 'amendment' of the Constitution. In principle, therefore, it is but proper that only Parliament should pass the requisite legislation effecting such changes. For these reasons, it is not possible to accept the proposal of the State Government that the word "may" in clause (1) of the Article be substituted by the word "shall".

2.33.06 We would recommend that when a Resolution passed by the Legislative Assembly of a State for abolition or creation of a Legislative Council in the State is received, the President shall cause the Resolution to be placed, within a reasonable time, before Parliament together with the comments of the Union Government. Parliament may thereupon by a simple majority of the members present and voting, declare that they adopt or reject the request contained in the Resolution. If the Resolution is so adopted by Parliament, the Union Government shall introduce the necessary legislation in Parliament for implementation of the resolution. If necessary, Article 169 may be amended to provide for this procedure.

2.34.01 One State Government has suggested that “terminal taxes on goods or passengers, carried by railway, sea or air, taxes on sale or purchase of goods which takes place in the course of inter-State trade etc.... be brought under the purview of Article 268”. It is further argued that it will be in the interest of tax administration to progressively allow the State Government to levy and administer these taxes which have now been included in Article 269. Another State Government has also asked for the transposition of the taxation heads comprised in Entries 89 and 92 of List I to List II. “Yet another State Government has suggested that a tax on advertisements should be imposed and the scope of Article 269(1)(f) may be widened to include, besides newspaper advertisements, advertisements broadcast by radio or telecast by television”.

2.34.02 At the outset, it may be observed that it is not clear from the memorandum of the State Government as to what is precisely meant when they say that the power to levy these taxes mentioned in Article 269 be “delegated” to the States. Does it mean that while these taxation heads may remain in the Union List, the power to levy the same may be delegated by the Union under Article 258 or otherwise to the States? If that be the stand of the State Government, then it is highly doubtful whether the Union is competent under the present Constitutional arrangements to delegate its exclusive legislative power to impose a tax specified in the Union List to the States. The Constitution divides the legislative power between the Union and the States. It also ordains that “no tax shall be levied or collected except by authority of law”. It is thus clear beyond doubt that no tax specified in the Union List can be levied save by

authority of a legislation enacted by Parliament. Can this essential legislative power of Parliament to enact a substantive law imposing a tax in the Union List be delegated under Clause (2) of Article 258 to the State Legislatures or the State executives? In this connection, it is noteworthy that while clause (1) of Article 258 has been made subject to the words, notwithstanding anything in this Constitution”, no such *non-obstante* phrase has been engrafted to Clause (2). Clause (2) of the Article, therefore, is “practically no exception” to the primary division of legislative powers between the Union and the States made by the Constitution, in as much as Parliament, while legislating on matters whithin its competence, is also competent to delegate administrative powers or powers of subordinate legislation relating to those matters, but not its *essential* legislative functions.[63]

We have dealt with the suggestion for transfer of Entries 89 and 92 from List I to List II in the Chapter on Financial Relations, in detail.

For the reasons stated therein we are unable to support the demand that these Entries be shifted to List II.

2.34.03 We have considered the suggestion that this tax should be imposed and the scope of Article 269(f) widened to include, besides advertisements in newspapers, advertsements broadcast by radio or telecast by television in the Chapter on Financial Relations, in details.

State's power to levy a tax on advertisements broadcast by radio or television was taken away by amending Entry 55 of List II by the Constitution (Forty-second Amendment) Act, 1976. But, no corresponding addition was made to Entry 92, List I which deals with taxes on advertisements in newspapers and to Article 269(f). Two arguments adduced by the Union Ministries of Information and Boradcasting and Law and Justice in favour of the present arrangements are: that the revenues from these advertisements should be fully available for the development of these services and a tax on advertise-ments might seriously erode accrual of revenue to them. A tax on advertisements which will be borne by the advertiser, does not in any way affect the availability of revenues from these advertisements for the development of these services. As regards the apprehension that a tax may have an adverse effect on the growth of advertisements, we have drawn attention to the fact that the steep hike in rates of advertise-ments did not have any adverse effect on the demand for advertisement time. A tax on advertisements in newspapers and a tax on advertisements in radio and television are on the same footing. For these reasons and others stated in the Chapter on Financial Relations, we are of the view that the Constitution should be amended suitably to add the subject of taxation of advertisements broadcast on radio or television, to the present Entry 92 of List I and Article 269(i)(f).

35. *ARTICLE* 285

2.35.01 Article 285(1) provides for exemption of the property of the Union from State and local taxation, “save in so far as Parliament may be law otherwise provide”. Clause (2) relaxes this limitation on

State taxation power. It says that Union properties, which were liable or treated as liable to a tax by any authority within a State immediately before the commencement of the Constitution will continue to be so liable until Parliament by law otherwise provides, but so long as that tax continues to be levied in that State.

Underlying Principle

2.35.02 an essential pre-condition for the harmonious working of a two-tier polity is, that neither the National nor the Regional Government should have power to make laws which are directed against and impair the exercise of essential governmental functions of the other. The immunity of the property of one govenment from taxation by another is a manifestation of that principle. To ensure that the smooth working of the Union-State relations is not marred by a "tax-war" between them, Articles 285 and 289 exempt the property of one government from taxation by the other.

Scope of Article 285

2.35.03 The object of the Article is not to prevent State or local taxation of Union property altogether, but to bring it under control of Parliament. The exemption granted under the Article extends only to Union Government's properties. It does not affect the competency of the State Legislature to impose a tax directly on the interest of a lessee or occupier of Union Properties.

Issues Raised

2.35.04 One State Government has pointed out that, as a result of the operation of this Article, the municipalities in that State are losing revenue, though they render civic services related to the Union undertakings, particularly the Railways. Its complaint is that, even in the cases where service charges were payable by the Union in terms of circulars of the Union Ministry of Finance, amounts were not being paid regularly resulting in large outstanding dues of the urban local bodies. The State Government has also drawn attention to the circulars[64] of the Ministry of Finance of the Union Government in terms of which the urban local bodies of State Government can realise service charges, at a rate varying between 33 percent and 75 percent of the property-tax rate realisable from private individuals, from the Union with respect to its properties. In view of these difficulties, the State government has suggested amendment of Article 285 to enable the urban local bodies, to impose rates on the properties of the Union Government. It has also asked for repeal of the Railways (Local Authorities' Taxation) Act, 1941.

2.35.05 Section 154 of the Government of India Act, 1935 exempted the property of the Central government from taxation by Provinces or local authorities. However, the proviso contained in Section 154 enabled the liability existing on 1-4-1937 to be maintained until otherwise provided for by the Central Legislature. It follows that if any property of the Central Government was non-existent on 1-4-1937, or was built or acquired by the Central Government subsequently, it would not get the benefit of the proviso.

2.35.06 In so far as properties of the Central Government, other than the Railways, are concerned, the result of the operation of Section 154 of the Government of India Act and Article 285, in the absence of any legislation, has been to freeze the tax liability as it existed on 1.4.1937.

2.35.07 Since the issue has been raised specifically in the context of services rendered by the local bodies to the State-owned railways and railway properties it is necessary to notice the relevant provisions of two central statutes bearing on the point. The first is Section 135 of the Indian Railways Act, 1890 which provides as under:

'135. Taxation of railways by local authorities– Notwithstanding anything to the contrary in any enactment or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administration in aid of the funds of local authorities, namely:

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the (Central Government) has by notification in the Official Gazette, declared that railway administration to be liable to pay the tax.

(2) While a notification of the (Central Government) under clause (1) of this Section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof, such sum if any as an officer appointed in this behalf by the

(Central government) may, having regard to all circumstances of the case, from time to time determine to be fair and reasonable.

(3) The (Central Government) may at any time revoke or vary a notification under clause (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(5) "Local authority" in this section means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river.

Various notifications were issued under the above provisions enabling the local authorities to levy a tax. However, Section 154 of Government of India Act, 1935 posed problems in relation to Railways which in the meantime came to be owned by the Government of India. Section 135 of the 1890 Act could no longer be applied to State-owned railways in view of the provisions of Section 154 of the Government of India Act, 1935. Section 154 also exempted State-owned railway property from provincial or local taxation, except in so far as a Central Legislation might otherwise provide. The position thus was that, until such a

law was enacted, no new tax could be imposed in respect of such property; nor could any existing notification in respect of such a property be varied or revoked. The proviso to Section 154 of the Government of India Act, 1935, however, maintained all the taxes payable by virtue of notifications issued under the Railways Act before 1st April, 1937, until legislation otherwise provided. The said proviso did not include property acquired by the government after 31st March, 1937. It was confined to the property of the Government of India which was subject to taxation on that date. The local authorities had thus been deprived of revenue from taxation in respect of several railway administrations purchased by the Government after 31.3.1937 and, in the absence of legislation, were likely to lose further revenue in the future.

2.35.08 To remove this complaint of the Provinces and the local bodies regarding loss of revenue, the Railways (Local Authorities' Taxation) Act, 1941 was enacted. Section 3 of the said Act provides:

"Liability of railways to taxation by local authorities.

(1) In respect of property vested in the Central Govern-ment, being property of a railway, administration shall be liable to pay any tax in aid of the funds of any local authority, if the Central Government, by notification in the Official Gazette, declares it to be so liable.

(2) While a notification under sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum, if any, as a person appointed in this behalf by the Central Government may, having regard to the services rendered to the railway and all the relevant circumstances of the case, from time to time, determine to be fair and reasonable. The person so appointed shall be a person who is or has been a Judge of a High Court or a District Judge".

Section 4 enables the Central Government, by notification, to revoke or vary any notification issued under clause (1) of Section 135 of the Indian Railways Act, 1890. This enactment proved beneficial to the Provinces and their local bodies as it made the property of the Railways liable to tax by local bodies, even when the property was acquired or built by the Government of India after 31st March, 1937.

2.35.09 It would be pertinent to take note at this stage of the effect of States re-organisation laws on the liability of the Railways to pay taxes to local bodies. The Supreme Court held in the case of the City Municipal Council Bellary[65] as under:

"The property of the Union is exempt from all taxes imposed by a State or by any authority within a State under Cl. (1) of Article 285 unless the claim can be supported and sustained within the four corners of Cl. (2). The local authority, however, can reap advantage of Cl. (2), only under two conditions namely, (1) that it is "that tax" which is being continued to be levied and on other; (2) that the local authority in "that State" is claiming to continue the levy of the tax. In other words, the nature, type

and the property on which the tax was being levied prior to the commencement of the Constitution must be the same as also the local authority must be the local authority of the "same State" to which it belonged before the commencement of the Constitution. There does not seem to be any ambiguity in this matter and there is, therefore, no escape from the position that the Bellary Municipal Council in the City of Bellary which was a local authority within the State of Madras cannot take the advantage of Cl. (2) as at the time when it was making the claim for realization of the tax it was a part of the Mysore State."

2.35.10 The Supreme Court further held in the Bellary Municipal Council case that a claim by a local authority based on the continued operation of Railways (Local Authorities' Taxation) Act, 1941 by virtue of Article 372 of the Constitution could not be sustained since Article 372 is operative subject to the other provisions of the Constitution and the Railways (Local Authorities' Taxation) Act, 1941 was not a law made by Parliament.

2.35.11 The net result of the various developments has been that only a few local bodies are today in a position to collect taxes in regard to the properties of the Central Government. The entire question was gone into by the Taxation Enquiry Commission as early as 1953, which recommended:

"In the case of Railways properties and other properties of the Central Government used for commercial or semi-commercial or industrial pruposes, e.g., Posts and Telgraphs, the Central Government should pay to local bodies contributions equal to the amounts which would have been paid, had the general and

services taxes been levied in full. Necessary legislation should be passed by Parliament to authorise such payments.

In respect of other properties of the Central Government, the principles recently adopted by the Central Government for making payments in respect of "service charges" with effect from the 1st April, 1954 may be followed, but the principles should be liberally interpreted and applied."

2.35.12 The Government of India, on receipt of the recommendations of the Taxation Enquiry Commission, agreed to pay charges for services rendered to such properties by local bodies *in lieu* of property tax. Subsequently, the Ministry of Finance, Government of India, issued a circular in 1967 laying down the procedure for calculation of such service charges as a percentage of the property tax applicable to private properties. However, no legislation, as recommended by the Taxation Enquiry Commission, has been enacted by Parliament so far. Most local bodies levy specific charges for particular services rendered e.g. supply of water. A property tax is levied by them to cover not only the cost of the other specific services rendered but also the expenditure on the total infrastructure maintained by them and to generate resources for further development. Levy of property tax by local bodies is well recognised as a legitimate resource available to them to discharge their responsibilities. We have noted above that the Taxation Enquiry Commission recommended a full contribution from the departmental undertakings of the Government of India like Railways, Posts and Telegraphs, Telephones, etc. If these undertakings pay only a percentage of the property-tax leviable as service charges, it implies a subsidy to them, which is contrary to the commercial principles on which such undertakings are supposed to function. Moreover, the loss to the local bodies has to be made good by increasing the liabilities of other beneficiaries of their services. This is obviously inequitous.

2.35.13 After a careful consideration of the whole matter in relation to the taxation of the Union properties by local bodies, we have come to the conclusion that no structural change in the provisions of Article 285 is called for. In order to remedy the unfortunate situation in which the local bodies find themselves, a comprehensive law (under clause (1) of Article 285 read with the saving clause in Entry 32 of List I), analogous to Section 135 of the Railway Act, 1890, and Sections 3 and 4 of the Railways (Local Authorities' Taxation) Act, 1941 be passed making liable the properties and administrations of all undertakings like Railways, Posts and Telegraphs, Telephones etc., of the Union at such fair and reasonable rates as may be notified from time to time by the Union Government after taking into consideration the recommendations of a person, who is or has been a Judge of a High Court or a District Judge.

2.35.14 One Union Government undertaking has suggested that the exemption from State taxation available under Article 285(1) should be extended to all taxes in relation to the property of all undertakings of the Government of India. In this connection, it may be noted that there is a reciprocal provision in Article 289(1) which exempts the property and income of a State from Union Taxation. However, this immunity from Union taxation does not extend to business activities conducted by a State or property used

or occupied for the purpose of such trade or business or any income accruing or arising in connection therewith. In *re Sea Customs Act*,[66] the Supreme Court expressed the view that the immunity, conferred by clause (1) of Article 289, extends only to direct taxes on property and does not extend to indirect taxes "in relation to property" of the State, irrespective of whether the properties were used or not used for the purpose of trade or business so as to attract clause (2). The Punjab and Haryana High Court, on the analogy of the principle enunciated in *re Sea customs Case*,[67] has held, in a judgement dated October 18, 1976, that the limitation on the State taxing power under Article 285(1) does not extend to the taxation of business activities of the Union. The Supreme Court has held in *Western Coal Fields Ltd., V. Special Area Development Authority*[68] that the property owned by a Corporation, whose entire share capital is owned by the Government of India, cannot be treated as the property of the Union and, as such immune from State taxation under Article 285(1). We do not find any good reason for supporting the proposal that the exemption from State taxation available under Article 285(1) should be extended to all taxes leviable by States in relation to the property of all undertakings of the Government of India.

2.35.15 In the light of these judicial pronouncements, we think that the constitutional provisions in Article 285(1) and 289(1), which exempt the properties of the Union and States from taxation by each other are well balanced and reasonable. We do not find any good reason for supporting the proposal for amending Article 285(1) in order to exempt the properties of the Union Government undertakings from indirect taxes in relation to them leviable by States.

36. *ARTICLE* 289

2.36.01 One State Government has suggested omission of clauses(2) and (3) of Article 289. The argument is that these clauses mete out unfair, discriminatory treatment to the States in the matter of exempting their property and income from Union Taxation. It is submitted that "under Article 289(2), Parliament is empowered to impose any tax in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith..... Notwithstanding clause (3) of Article 289 which again gives the power to the Parliament to make law to declare any trade or business as being incidental to the ordinary functions of Government, yet this provision by itself creates discrimination". It is pointed out that on the other hand (under Article 285), no tax is contemplated on the income from the occupational or trading operations of the Union. In this behalf reference has been made to *Andhra Pradesh Road Transport Corporation* V. *ITO*[69]. The proposed omission of clauses (2) and (3), it is argued, would place "both the Union and the States at par in so far as their occupations, particularly in the matters of trade and business are concerned".

2.36.02 Article 289(1) is, in a sense, a counterpart of Article 285(1). Whereas 285(1) exempts the property of the Union from State taxation, Article 289(1) exempts the property and income of a State from Union taxation. Clause (2) of Article 289 carves out an exception to clause (1). It enables the Union by law to impose tax in respect of trade or business carried on by or on behalf of the Government of a State, or any property used for the purpose of trade or business or any income accruing or arising in connection therewith. Clause (3) empowers Parliament by law to exempt any trade or business activity of a State from Union taxation by declaring that it is incidental to the ordinary functions of Government.

2.36.03 It will be seen that, in Article 285, there is no provision analogous to clauses (2) and (3)[70] of Article 289. It has been held by the Supreme Court that even a public utility service systematically undertaken by a Government, with a profit motive, would be a 'trade or business' within the contemplation of clause (2) of Article 289. It can be exempted from Union taxation if Parliament declares under clause (3) that it is incidental to the ordinary functions of Government.

Supreme Court in Re Sea Customs Act

2.36.04 The scope of Article 289(1) directly, and of Article 285(1) incidentally, came up for consideration before the Supreme Court in *re Sea Customs Act*, 1878[71]. Prior to 1962, the State properties enjoyed exemption from Union taxation, whether direct or indirect. In 1962, a draft Bill was introduced in Parliament for amending Section 20 of the Sea Customs Act, 1878, and Section 3(1A) of the Central Excises and Salt Act, 1944. The object of the amending Bill was to enable the Union to impose customs duty and excise duty of salt manufactured by the States. The States opposed this measure. The President referred the matter under Article 143(1) to the Supreme Court for opinion. The Supreme Court opined that having regard to the scheme of the Constitution, a tax 'on property' and a tax 'in relation to property' were

two different things. Therefore, the immunity from taxation granted under Article 285(1) to the property of the Union, and under Article 289(1) to the property of the States, was restricted to direct taxes 'on property' and did not extend to indirect taxes 'in relation to property', such as, export duty, excise duty etc.

2.36.05 It may be noted that, while from one aspect, the Court opinion appears to have enlarged the taxing powers of the Union qua State property, it has from another standpoint, by restricting the exemption under Article 285, to taxes 'directly on property' laid down several activities of the Union 'in relation to' its property to tax, which the States might impose under list II. Sales-Tax is a typical instance of such a tax, which is levied on a transaction of sale *in relation to* property and not one *on* the property, itself.

Property of Corporations not exempt under Article 285 (1) or Article 289 (1)

2.36.06 It is further noteworthy that the exemption from taxation under Articles 285(1) and 289(1) is available only to the property of the Union or of the States, respectively. It does not extend to the property or income of companies or corporations, which are juristic entities, even though they may be wholly owned or controlled by the Union or a State. In *A. P. Road Transport Corporation* V. *ITO*[72], the Supreme Court held that the income of the Andhra Pradesh Road Transport Corporation, established under the Road Transport Corporation Act, 1950, is not the income of the State of Andhra Pradesh within the meaning of Article 289(1) and as such, was not exempt from Union taxation. It was not considered necessary for the decision of that case to go to clauses (2) and (3) of Article 289.

2.36.07 *In western Coal Fields* V. *Special Area Development Authority*[73], the Supreme Court held that exemption conferred by Article 285(1) cannot be claimed by companies and corporations owned by the Union.

2.36.08 The conclusion that emerges from the above conspectus is that, in the matter of granting exemption to the property of the Union or of the States from taxation by each other the Constitution does not make unreasonable discrimination against the States. So far as indirect taxes 'relating to property', as distinguished from taxes 'on property' are concerned, both the Union and the States for the purpose of the exemption stand on the same footing. Though the provisions of clauses (2) and (3) of Article 289 apply only to the trade activities of the States and, as such, are unique, there is rational basis for this differentiation. Income from business or trading activities of a State are like the income of any private business concern liable to income-tax. The goods manufactured by a State concern are also liable to excise duty. There is no reason to give a favourable treatment to the goods manufactured by a State as part of its commercial activity, in the matter of its liability to excise duty from those manufactured by any other private industrial concern. Leaving aside the case of some maritime States, these are the main taxes which are imposed on the income and the manufacturing activities of any business concern. Both these taxes though levied by the Union, are compulsorily or optionally shareable with the States. Indeed, as much as 85% of the net proceeds of income-tax and 45% of the net proceeds of the Union excise duty, on the recommendation of the Finance Commission[74], are now being transferred to the States. If the trading or business activities of the States who have gone into it in a big way, are exempted from income-tax and excise duty, the scheme of the Constitution governing distribution of revenues will get distorted. The flow of the proceeds of income-tax and excise duty into the divisible pool will dwindle. The consequent shrinkage of the pool will jeopardise the capacity of the Union to transfer resources, particularly, to the economically weaker States, on equitable basis.

2.36.09 Clause (3) of Article 289 empowers Parliament to declare by law that any trade or business would be taken out of the purview of clause (2) and restored to the area covered by clause (1). Income from ordinary functions of the State are exempt from Union taxation by virtue of clause (1). Even though income from trade or business is not exempt, clause (3) enables such exemption to be given by Parliament in respect of income from trade or business incidental to the ordinary functions of Government. This is the rationale of clause (3) of the Article. We are, therefore, of the view that no case has been made out for the proposed restructuring of Article 289.

2.36.10 As regards the functional aspect of clause (3), it may be observed that the concept of the governmental functions of a modern welfare State is not easy to define. It is not a static notion. The public utility services rendered by the State are progressively proliferating. Many of such services or welfare activities judged by the orthodox standard of 'profit motive' may fall within the wide phrase, 'trade or

business of any kind', used in clause (2). The vast expansion in the socio-economic responsibilities of a welfare State to build an egaliterian society, has blurred the distinction between the 'ordinary' and 'incidental' functions of Government.

2.36 .11 Cases may arise, particularly in the modern context where States may feel aggrieved on account of taxes imposed by the Union on the trade or business in terms of clause (2) of Article 289. The scheme of the Constitution envisages remedial action under clause (3). We recommend that where one or more State Governments feel aggrieved on account of any action of the Union Government covered by clause (2) of Article 289, adequate consultation should be held with the State Governments or the National Economic and Development Council proposed by us and action taken to afford relief in terms of clause (3) of Article 289.

37. *ARTICLE* 286

Article 286

2.37.01 One State Government has suggested that the power of Parliament under clause (3) of Article 286 should not be exercised except in consultation with the States. Another State Government has asked for amendment of Article 269 to ensure that the taxes mentioned therein are levied by the Union but are collected by the States themselves. One regional Party has suggested that entries 92A and 92B from List I

be omitted and from the connected Entry 54 of List II, the words, “subject to the provisions of Entry 92A of List I” be deleted. This proposal would, by implication, involve consequential changes in the related provisions.

Related constitutional provisions

2.37.02 The relevant provisions which impose restraints on the State taxation power in the matter of sales-tax are contained in Entry 54 of List II, Entries 92A and 92B in List I read with Articles 269(1)(g) & (h) and 286.

2.37.03 Entry 54 in List II empowers the State Legislatures to impose taxes on the sale or purchase of goods other than newspapers. It is expressly subject to the provisions of Entry 92A of List I. Under Entry 92A, Parliament may tax sale or purchase of goods other than newspapers, in the course of inter-State trade or commerce. Entry 92B of List I empowers Parliament to impose “taxes on the 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”.

2.37.04 Article 269 contains provisions for the assignment of the taxes imposed by the Union under Entries 92A and 92B to the States.

Clause (1) of the Article 286 precludes the States from imposing by law a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State, or

(b) in the course of import of goods into, or export of the goods of, the territory of India.

Clause (2) of the Article enables Parliament to formulate by law principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1). Clause (3)(a) of Article 286 makes the legislative power of the States to impose tax on sale or purchase of goods which are declared by Parliament by law to be of special importance in inter-State trade or commerce, subject to the restrictions and conditions imposed by Parliament, even though such sale does not take place in the course of inter-State trade or commerce. A tax under sub-clause (b) of clause (3), also, is subject to the same conditions and restrictions as Parliament may by law impose.

2.37.05 The objection is confined to Entries 92A, 92B of List I, that portion of Entry 54 of List II which makes it subject to Entry 92A of List I, and the related provisions in Article 269 and 286. The provisions in question were not there in the original Constitution. Instead of the present clause (2) of Article 286, there was an 'explanation' appended to clause (1). The original clause (2), *inter alia*, provided: “except in so far as Parliament may by law otherwise provide, no law of State shall impose.....a tax on the sale or purchase

of any goods where such sale or purchase takes place in the course of inter-State trade or commerce.....” The 'explanation' appended to the original clause (1) was couched in a very ambiguous language and gave rise to conflicting interpretations. In *State of Bombay* V. *United Motors (India) Ltd*[75] the Supreme Court interpreted this. Explanation as providing “by means of legal fiction that the State in which the goods sold or purchased are actually delivered for the consumption therein, is the State in which the sale or purchase is to be considered to have taken place, notwithstanding (that) the property in such goods passed in another State”. As a result of the application of this 'delivery-cum-consumption' test, devised by the Supreme Court, the operation of the original clause (2) was largely stultified. It also created problems in the trading circles.

In *Bengal Immunity Co*. V. *State of Bihar*[76] decided on September 9, 1955, the Supreme Court over-ruled its earlier decision in the *United Motors case.* Thereupon, Parliament passed the Sales Tax Laws Validation Act, 1956 to validate the imposition of sales tax which would have been rendered invalid as a result of the subsequent Court decision. The final result was that inter-State sales made after September 6, 1955 could neither be taxed by the State of despatch nor by the State in which the delivery was made till Parliament by law otherwise provided. This led to revenue loss resulting from non-taxation of inter-State sales.

2.37.06 On the recommendation of the Taxation Enquiry Commission[77] (1953-54), the Constitution (Sixth Amendment) Act, 1956 and the Central Sales Tax Act, 1956 were enacted. The Sixth Amendment inserted Entry 92A in List I and restructured Article 286. It made Entry 54 of List II subject to this new Entry 92A. This amendment also inserted sub-clause(g) in clause (1) of Article 269. The Forty-Sixth Amendment of the Constitution (1982) inserted Entry 92B in List I and made consequential insertion in

Article 269 with respect to assignment of the tax proceeds under the new Entry 92B to the States. It also expanded the definition of 'Sales-tax' by inserting the new clause (29A) in Article 366.

2.37.07 From a conspectus of the relevant provisions, it is clear that the entire net proceeds of the taxes that might be levied by the Union under Entries 92A and 92B of List I in accordance with sub-clauses (g) and (h) of Article 269(1), are assigned to the States. The limitations imposed under Article 286 on the taxation power of the States ultimately rebound to the fiscal advantage of the States. The broad three fold object of these provisions, as they stand after the aforesaid Constitutional amendment, is—

(i) to prevent, as far as possible, multiple taxation of the same transaction by different States in the course of inter-State trade or commerce, the accumulated burden of which ultimately falls on the consumer

(ii) to ensure uniformity in taxation at a relatively lower rate on sale or purchase of goods of special importance in inter-State trade, and

(iii) to plug the loopholes in the law through which some sales might escape assessment, and to enlarge the powers of the States to levy sales-tax by expanding the definition of sales-tax to cover transactions in the nature of works contract or hire-purchase.

2.37.08 In short, the ultimate benefit of the operation of the questioned provisions accrues wholly to the States. We find no merit in the demand for omission or making any structural change in any of these provisions. However, since Entries 92A and 92B of List I have an inter-face with Entry 54 of List II, the formulation of law of policy in respect of these subjects is a matter of common interest to the Union and the States.

2.37.09 We recommend that before a law is passed by Parliament by virtue of clause (3) of Article 286 read with Entries 92A and 92B of List I, the State Governments and the National Economic and Development Council (proposed by us to be reconstituted under Article 263)[78] should be consulted and the resume of their comments should be placed before Parliament along with the Bill.

38. *ARTICLE* 288

2.38.01 One State Government has urged that Article 288(2) be so amended as to ensure that the Legislature of a State may impose a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority, whether subservient to the Central or State Government. However, it has not formulated its proposal in precise terms. We, therefore, take it that the plea is for exclusion from this clause of those expressions which make the previous assent of the President, a pre-condition for giving validity and effect to a State legislation imposing a tax mentioned in clause (1) of the Article.

2.38.02 Entry 53 of List II read with Article 246 empowers a State legislature to impose “taxes on the consumption or sale of electricity”, irrespective of whether it is generated, sold, or consumed by Government or by any other person. Articles 287 and 288 put limitations on this power. Article 287 prohibits a State Legislature from imposing a tax on the consumption or sale of electricity (whether produced by a Government or other person) which is (a) consumed by or sold to the Government of India for consumption by the Government, or (b) consumed in the construction, maintenance or operation of any railway. However, this restraint may be removed by Parliament by a law securing that the price of the electricity sold to the Government of India shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

2.38.03 Article 288(1) provides : “Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley”. Clause (2) empowers a State Legislature to impose tax mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent. This requirement as to the Presidential assent is applicable to rules or orders made under the authority of such law providing for fixation of rates or other incidents of such tax.

2.38.04 It is noteworthy that the subject of taxation under Article 288(2) is “water or electricity stored, generated, consumed, distributed or sold by an authority established by an existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley”. The basis for the restriction imposed by Article 288(2) on the legislative power of States, therefore, is a corollary of the doctrine of 'inter-governmental tax immunities'. However, such restrictions would stand lifted and the State legislation validated if it receives President's assent. The subject of taxation under this clause is a matter of inter-State 'Utility' and, as such, of national concern. The President's assent ensures that the concerned legislation of the State would not operate to the detriment of inter-State interests or cast unjustifiable burdens on the cost of generation, storage, consumption, distribution of water or electricity, or otherwise impair the arrangements relating to the regulation and development of the inter-State river or river-valley by the Union authority. The previous assent of the President as a pre-requisite for giving validity to a State legislation imposing tax under clause (2) of the Article, serves a very wholesome purpose in this area of inter-governmental interest. We find no justification for suggesting restructuring of clause (2) of Article 288 so as to eliminate therefrom this requirement.

39. *ARTICLE* 293

2.39.01 Issues relating to Article 293 have been dealt with in the Chapter on 'Financial Relations'.[79] We have not recommended any structural change in this Article. However, recommendations with respect to the functional aspect of the provision have been made.

40. *ARTICLE* 304(*b*)

2.40.01 Some State Governments and a political party have asked for omission of Article 304, and, in the alternative, for deletion of the Proviso to Article 304(b). The arguments advanced are:

> “Whether the restrictions imposed by an Act of a State Legislature on the freedom of trade and commerce are reasonable and whether they are in the public interest for purposes of Article 304(b) are questions to be decided ultimately by the High Court or Supreme Court. If the High Court finds that the restrictions are unreasonable or opposed to the public interest, previous sanction of the President or his subsequent assent cannot cure the infirmity. If the legislation is otherwise valid and the restrictions are reasonable and in the public interest, his previous sanction will be a superfluity. In any case the requirement relating to the previous sanction of the President directly encroaches on the field assigned to the State Legislature....”.

Inter-State Trade

2.40.02 Part XIII of the Constitution contains provisions relating to “Trade, Commerce and Inter-course within the Territory of India”. It comprises seven Article — 301 to 307. Article 301 provides that “subject to the other provisions of this Part trade, commerce and intercourse throughout the territory of India shall

be free". Article 302 empowers Parliament to impose restrictions[80] on trade, commerce and intercourse. Article 303(1) ordains that neither Parliament nor a State Legislature shall have power to make any law giving any preference to one State over another or discriminating between one State and another by virtue of any entry relating to trade or commerce in the Legislative Lists. Notwithstanding the principle of freedom of inter-State trade declared in Article 301, clause (a) of Article 304 permits the Legislature of a State by law to tax goods imported from the other States or Union Territories. However, this taxing power of the State is subject to the limitation that no discrimination is made between goods imported from other States and similar goods manufactured or produced within the State. Clause (b) enables the Legislature of a State by law to "impose such reasonable restrictions on the freedom of trade, commerce or inter-course with or within that State as may be required in the public interest : Provided that no Bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President".

Whether 'restrictions' in article 304 (b) include A 'Tax'

2.40.03 There is some divergence of opinion as to whether the expression 'restrictions' used in this clause (b) includes a tax. Prior to the decision of the Supreme Court in *Atiabari Tea Co. Ltd.* V. *State of Assam*[81], some High Courts had held that no question of violation of the provisions of clause (b) arises when a State Legislature exercises its legislative power under the State List with respect to a subject other than 'trade, commerce or inter-course'. In *Atiabari case,* the Supreme Court by a majority of 4 : 1 reversed this view. In *Automobile Transport Rajasthan Ltd.* V. *State of Rajasthan*[82], a seven-Judge Bench of the Supreme Court partially over-ruled the decisions in *Atiabari Case* in so far as it had held that if the State Legislature wanted to impose a tax in order to maintain roads that could only be done after obtaining the sanction of the President as provided in Article 304(b). However, it did not make a complete departure from the *ratio of Atiabari Case* in as much as it had held that taxes *other than* compensatory taxes, can amount to a 'restriction' on trade and commerce within the contemplation of clause (b) of Article 304.

2.40.04 The correctness of these decisions has been questioned by eminent authors of commentaries on the Indian Constitution. In *G.K. Krishnan* V. *State of Tamil Nadu*[83], Mathew J. observed

> "Article 304(a) prohibits only imposition of a discriminatory tax. It is not clear from the Article that a tax *simpliciter* can be treated as a 'restriction' on the freedom of internal trade. Article 304(a) is intended to prevent discrimination against imported goods by imposing on them tax at a higher rate than that borne by goods produced in the State". The learned Judge further pointed out: "A discriminatory tax against outside goods is not a tax *simpliciter* but is a barrier to trade and commerce. Article 304 itself makes a distinction between 'tax' and 'restriction'. That apart, taxing powers of the Union and States are separate and mutually exclusive. It is rather strange that power to tax given to States, say, for instance under Entry 54 of List II to pass a low imposing tax on sale of goods should depend upon the goodwill be the Union executive".

Narrow scope of article 304(b)

2.40.05 Be that as it may, the Court decisions, including those in *Atiabari* and *Automobile cases,* have considerably narrowed down the scope of the expression 'restriction' in Article 304(b) by giving a restrictive meaning to the terms 'trade', 'commerce' and 'intercourse', and by holding that only those measures which directly and immediately impede the free movement of trade, would fall within the ambit of 'restriction'. Further, they have excluded regulatory measures and compensatory taxes-construed in their widest amplitude from the purview of Articles 301 and 304(b).

Object of article 304(b)

2.40.06 The broad object of the provisions of Articles 301 and 304 is to ensure that the commercial unity of India is not broken up by physical and fiscal barriers erected by the state Legislatures through parochial or discriminatory exercise of their powers. The provisio to Article 304(b) enables the President to ensure, at the initial stage, that the State Legisla-tion does not, by imposing unreasonable restrictions on trade, commerce or intercourse, endanger the commercial unity of the nation. It is true that clause (b) is not confined to inter-State trading activities, it extends to trade within the State, also. But intra-State trading activities often have a close and substantial relation to inter-State trade and commerce. State laws, though

purporting to regulate trade within a State, may have inter-State implications. They may impose discriminatory taxes or unreasonable restrictions which impede the freedom of inter-State trade and commerce. That is why, both inter-State and intra-State trade have been made the subject of limitations on State legislative power under Article 304(b).

2.40.07 Whether a State legislation imposes in the public interest reasonable restrictions on trade and commerce, is, no doubt, a question which is to be decided ultimately by the High Court or the Supreme Court. But, such legislation is not automatically, as a requirement of law, referred to the court for pronouncing on the reasonableness or otherwise of such restrictions. The Courts take cognizance only of cases brought before them in accordance with the prescribed procedure by litigants having the necessary *locus standi.* Judicial review is thus not an adequate substitute for the consideration of a State Bill by the President, at the pre-introduction stage, or, thereafter before it becomes law. If, on such scrutiny, the President finds that the State Bill patently contravenes the provisions of Article 304(b), or otherwise attempts to impose an unreasonable restriction, he may withhold assent therefrom or he may return it with a message for reconsideration by the State Legislature. However, no instance of a Bill reserved under the Proviso to clause (b) of Article 304, which might have been vetoed by the President, has been cited.

2.40.08 For these reasons, we cannot support the demand for amendment of Article 304, or omission of the Proviso to its clause (b).

41. *ARTICLE* 368, *CRITICISM AND SUGGESTIONS*

2.41.01 Only one State Government has suggested that Article 368 should be amended to provide that:

(1) The Constitutional Amendments in general shall require also ratification by not less than one half of the States; and

(2) the amendment of specified Articles pertaining to the basic structure of the Constitution shall require ratification by not less than two-thirds of the States.

It has, in support of the above proposals observed:

"There will be nothing wrong if by a Constitutional amendment a particular matter is transferred from the jurisdiction of the the States to that of the Union when new developments in the Indian economy, society or polity fully justify this. But Constitutional amendments of the kind undertaken as part of the motivated drive of the country's dominant supranational forces to undermine the jurisdiction and significance of the States as the homelands of different emerging and emerged Indian nationalities by converting the country increasingly into an essentially unitary State must be resisted and made more difficult. The ultimate safeguard against such amendments necessarily has to be the strong political awareness of the electorate with regard to the true significance of such amendments, reinforced by the prevalence of a climate of freedom, rule of law and cooperative federalism. But it will also be necessary to amend Article 368 to provide for greater say to the States in Constitutional Amendments."

Proceedings in the constituent assembly

2.41.02 The questionnaire issued by the Constitutional Adviser in March 1947 invited suggestions in regard to the amending procedure to be adopted. The replies received recognised the need for a special procedure for amending the Constitution. Some of the proposals were complicated and included a suggestion that all amendments to the Constitution should be first approved by a two-thirds majority in each House of Union Legislature and that no such proposal would take effect unless it was also approved by the Legislatures of not less than two-thirds of the Units.

Observations of the Drafting Committee

It was, however, realised that the procedure should not be made unduly complicated or rigid. The Chairman of the Drafting Committee, while introducing the Draft Constitution, observed:[84]

"The provisions of the Constitution relating to the amendment of the Constitution divide the articles of the Constitution into two groups. In one group are placed articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the courts. All other articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double

majority, namely a majority of not less than two-thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these articles does not require ratification by the States. It is only in those article which are placed in the first group that an additional safeguard of ratification by the States is introduced, one can therefore safely say that the Indian federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation."

2.41.03 The Constitution provides three modes of altering its provisions:

I. Firstly, quite a number of provisions or matters in the Constitution can be altered by a simple majority vote of Parliament. Most prominent of these are:—

(i) Articles 2, 3 and 4 — admission or establishment of new States into the Union; formation of new States and alteration of areas, boundaries or names of existing States and making such changes in the First Schedule and the Fourth Schedule and in any other provisions of the Constitution as may be supplemental, incidental and consequential to give effect to the laws made under these Articles.

(ii) Articles 168 and 169—creation or abolition of Legislative Council in a State and consequent alteration in Article 168.

(iii) Provisions of the Fifth and Sixth Schedules relating to the administration of Scheduled Areas and Scheduled Tribes.

(iv) Article 343(2) as regards the timelimit of 15 years specified therein, for use of English.

No alteration or change made by this mode is to be deemed an amemdment of the Constitution for the purpose of Article 368.

II. Provisions or matters, the alteration of which is not permissible by a simple majority vote of Parliament and which do not fall within the purview of the proviso to clause (2) of Article 368, may be amended by means of a Bill passed in each House of Parliament by a majority of the total membership of that House and by a majority of not less than two-thirds of the Members of the House present and voting.

III. The third group is comprised of provisions mentioned in the proviso to clause (2) of Article 368. These are as follows:

(a) Articles 54 and 55—manner of election of the President; Articles 73 and 162-extent of the executive power of the Union and the States; Article 241-High Courts for Union Territories.

(b) Chapter IV of Part V—The Union Judiciary; Chapter V of Part VI—The High Courts in the States; Chapter I of Part XI—Legislative Relations between the Union and the States.

(c) Lists I, II and III in the Seventh Schedule.

(d) Representation of States in Parliament.

(e) Provisions of Article 368 itself.

A Bill for amending any provision in Group III, also, has to be passed by Parliament by a double majority—as in the case of an amending Bill relating to Group II—and followed by ratification by Legislatures of not less than one-half of the States.

2.41.04 The problem of devising a mechanism for amend-ment of a Constitution which envisages more than one level of government, is, how to reconcile the rival claims of rigidity and flexibility. The former preserves continuity and stability, the latter facilitates adaptation and reform. If the scales are too heavily tilted in favour of rigidity, it tends to make the system immutable and out-dated in a changing world. If on the other extreme it is too flexible and pliant, the system tends to become something like a changeling changeing shape with every passing gust of political wind. The Constitution-makers avoided these extremes. They chose a middle, but trifurcated, course. They conceived of three groups of constitutional provisions for adopting a three-way alteration process. The rationale for this grouping and adopting different modes of altering provisions in each group, is that all the provisions in our elaborate Constitution are not of the same substantive significance to its structure. Many of them are matters of mere form or procedural details; or are otherwise of a subsidiary, incidental or transitional character. Provisions of this kind which are of a non-fundamental character, have been kept outside the pale of Article 368 and can be altered in the same manner as any Union law, by a simple majority vote of Parliament. All such matters for the purpose of this discussion have been placed by us in Group I.

2.41.05 Most Articles in the Constitution-not covered by Group I—are matters of substance. For the purpose of amendment under Article 368 these have been placed in a separate group, numbered II by us. These provisions can be amended by Parliament by a double majority, as described above in paragraph 2.41.03, sub-para II.

2.41.06 A few provisions which were considered of crucial importance in the scheme of distribution of powers between the Union and the States on the federal principle, or were otherwise considered vital to the two-tiered polity, have been placed in another group, vide Proviso to Article 368(2). The process for amending the provisions in this group, is more stringent than the one applicable to Group II. In other words, while the process for amending matters in Group II balances the considerations of flexibility and rigidity on an even fulcrum, the one provided for Group III registers a reasonable tilt in favour of rigidity.

2.41.07 While suggesting that the amendment of the Articles constituting the basic structure of the Constitution must be ratified by at least 2/3rds of the total number of States, the State Government has not identified such Articles. However, in a subsequent paragraph of its Memorandum, while reiterating the same suggestion, it has, instead of the expression "basic structure", used the words "Articles bearing on the Union-State relations". If that be the true import of the suggestion it has been very largely met by the proviso to clause (2) of Article 368—the shortfall in ratification being only as respects 1/6th of the total number of States.

3.41.08 It may be reiterated that the main provisions governing Union-State relations in the legislative and executive spheres have been specified in this proviso and every amendment of these provisions, passed by Parliament with the requisite majority, is required to be ratified by the legislatures of not less than one-half of the States. If, as suggested by the State Government, the requirement as to ratification by one-half of the States, is engrafted on the process prescribed for amending the provisions in Group II, and the word "one-half" occurring in this Proviso is replaced by the expression "2/3rds", it will make the process of amending matters in Group II *needlessly* rigid and those in Group III very difficult. Yet, every Constitution, however carefully conceived and skillfully framed, needs to be adapted and attuned to the march of time. It is fairly conceded even by the State Government that there will be nothing wrong if by a Constitutional amendment, a particular matter is transferred from the jurisdiction of the States to that of the Union when new developments in the economy, society or polity fully justify this.

2.41.09 Amendment is the primary method of making changes or reforms in a Constitution. Experience of the United States of America holds a lession that if this primary channel for amending the Constitution is hemmed in by too rigid conditions, requiring it to pass the test of too high consensual barriers, it loses much of its utility. The result is that instead of following the frustrating process of amending the Constitution, people agitating for a reform to update the Constitution, increasingly look to other institutions, particularly the Supreme Court, for getting Constitution moulded to the changing exigencies of the time. Such are the tendencies which have appeared in the United States, an amendment of whose Con-stitution requires not only approval of two-thirds of both Houses of Congress, but also its ratification by three-fourths of the States[85]. It will be seen that the amending process in the United States of America is so rigid that "for an amendment to clear the barriers to passage, its acceptance must come close to unanimity. For one-third plus one of those voting in either the Senate or the House can kill it". This exceedingly rigid process, according to some observers, has proved a formidable barrier to the structural reform of that Constitution. An American scholar notes that out of twenty-six successful efforts to amend the Constitution, "there has not been a single amendment in two hundred years that redistributed govern-mental power. The two amendments that can be called as even affecting the institutional structure at all, the Seventeenth (1913) and the Twenty-second (1951) concerned only the selection of the individuals who would wield institutional power not the scope of the institutional authority itself[86].

2.41.10 There is, yet another reason why the process of amending our Constitution should not be too rigid and inflexible. The Constitutions of the older Federations are shorter. They lay down only broad fundamental principles of the polity in general terms. There is ample scope for filling the blanks and interstices therein, by what some scholars call, "Court Legislation".[87] Our Constitution, by contrast, is very compre-hensive, and consequently, the scope for moulding or changing it by judicial interpretation and activism is limited.

2.41.11 There can be no gainsaying the fact that the three-fold scheme of making alterations in the Constitution has been designed by the framers with sedulous care after bestowing deep consideration on all

the pros and cons of the problem. Granville Austin verily observes[88] that the amending process, in fact, has proved itself one of the most ably conceived aspects of the Indian Constitution, and although it appears complicated, it is merely diverse, providing three ways of ascending difficulty for altering the Constitution.

For all the foregoing reasons, we are unable to support the suggestion of the States Government.

42. *ARTICLE* 370 *: TEMPORARY PROVISIONS WITH RESPECT TO THE STATE OF JAMMU AND KASHMIR*

2.42.01 One all India Political Party has demanded that Article 370 being a transitory Article should be deleted in the interests of national integration. No other political party has made such a demand. The Jammu & Kashmir State Government has drawn attention to the Special Constitutional position of the State. In their Memorandum, the Government of Jammu and Kashmir State have, *inter alia,* questioned the Con-stitutional validity of the Constitution (Applicable to Jammu and Kashmir) Amendment Order, 1986 dated 30-7-1986, which applies Article 249 of the Constitution of India, with slight modifications, to Jammu & Kashmir.

2.42.02 The text of Article 370 is as under:

"(1) Notwithstanding anything in this Constitution :—

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.— For the purposes of this Article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's proclamation dated the fifth day of March, 1948;

(c) the provisions of Article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify;

Provided that no such order which relates to the matters specified in the instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) 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".

2.42.03 First, we take up the demand that Article 370 being a transitory provision, should be deleted. The constitutional history of the provisions in Article 370, is too well known to require any recapitulation. Suffice it to say that, as a result of the numerous orders passed by the President from time to time under

Article 370(1), a large number of the provisions of the Constitution of India have become applicable to the State of Jammu and Kashmir. The only precondition for the exercise of this power by the President is the concurrence of the Government of the State i.e. of its Governor acting on the advice of his Council of Ministers[89].

2.42.04 There is no limitation on the exercise of this power in relation to one or more of the remaining provisions of the Constitution of India. It is important to note that the process of extending the various provisions of the Constitution to the State, has been gradual and founded on consensus and experience, to the mutual advantage of the Union and the State. Because of the special circumstances in which Jammu and Kashmir became an integral part of India, the question whether its distinct constitutional status ought or ought not to continue, bristles with political complexities and is not a mere legal issue. We, therefore, refrain from making any suggestions in this regard.

2.42.05 We now consider the plea of the State Government questioning the constitutional validity of the President's Order applying Article 249 of the Constitution of India, with some modification, to the State of Jammu and Kashmir. The argument is that on the date of the Order (30-7-1986), the proclamation made

earlier on March 7, 1986, under Section 92 of the State Constitution, whereunder the Governor had assumed to himself all the functions of the State Government and dismissed the Council of Ministers and suspended the Legislative Assembly, was still in force, and that in these circumstances, the concurrence, if any, given by the Governor to the making of the "1986 Order" by the President, was not the concurrence of the Government of State of Jammu and Kashmir, i.e. of the governor *acting on the advice of the State Council of Ministers*, and as such, it was *ultra vires* the Constitution. We have been informed by the Advocate-General of the State of Jammu and Kashmir that the Constitutional validity of the "1986 Order" of the President, is under challenge in the High Court of Jammu and Kashmir. As the matter is *sub-judice*, we would refrain from expressing any opinion on it. Nevertheless, we would like to re-emphasise the axiom that every action which is legally permissible may not be necessarily prudent or proper from the political stand-point.

43. *RECOMMENDATIONS*

2.43.01 Residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of Parliament, while the residuary field other than that of taxation, should be placed in the Concurrent List. The Constitution may be suitably amended to give effect to this recommendation.

(Para 2.6.18)

2.43.02 (i) The enforcement of Union laws particularly those relating to the Concurrent sphere, is secured through the machinery of the States. Coordination of policy and action in all areas of concurrent or overlapping jurisdiction through a process of mutual consultation and cooperation is, therefore, a prerequisite of smooth and harmonious working of the dual system. To secure uniformity on the basic issues of national policy with respect to the subject of a proposed legislation, consultation may be carried out with the State Governments individually, and collectively at the forum of the proposed Inter-Governmental Council.

(Para 2.14.01)

(ii) It is not necessary to make the proposed consultation a constitutional obligation. This will make the process needlessly rigid. The advantage of a convention or rule of practice is that it preserves the flexibility of the system and enables it to meet the challenge of an extreme urgency or an unforeseen contingency. This convention as to consultation with the State Governments, individually, as well as collectively, should be strictly adhered to except in rare and exceptional cases of extreme urgency or emergency.

(Para 2.14.03)

2.43.03 The best way of working Union-State relations in the sphere of education would be that the norms and standards of performance are determined by the Union and the professional bodies such as the

U.G.C. set up under Central Enactments but the actual implementation is left to the States. By the same token a system of monitoring would have to be established by the Union. The basic prerequisites of successful working of such professional bodies are—(i) that their composition, functioning and mode of operation should be so professional and objective that their opinion, advice or directive commands implicit confidence of the States and Universities/institutions concerned and (ii) this objective cannot be achieved without close concert, collaboration and cooperation between the Union and the States.

(Paras 2.17.16 and 2.17.17)

2.43.04 There is a potential for misuse by the two levels of government of the powers available by virtue of Entry 45 of List III. However, the mere fact that this power is capable of being misused, is no ground for amending the Constitution. There is a case for providing appropriate safeguards against the misuse of this power, in the Commissions of Inquiry Act, itself. Such safegaurds can be:—

(i) That no Commission of inquiry against an incumbent or former Minister of a State Government on charges of abuse of power or misconduct shall be appointed by the Union Government unless both Houses of Parliament, by resolution passed by the majority of members present and voting,

require the Union Government to appoint such a Commission *or*, the Minister or Ministers concerned request in writing for the appointment of such a Commission; and

(ii) No Commission of inquiry shall be appointed to inquire into the conduct of a Minister (incumbent or former) of a State Government with respect to a matter of public importance touching his conduct while in office, unless the proposal is first placed before the Inter-Governmental Council (recommended to be established under Article 263) and has been cleared by it.

(iii) Appropriate safeguard on the lines indicated above, be provided in the Commissions of Inquiry Act, 1952 itself, against the possible misuse of this power, while appointing a Commission to inquire into the conduct of a Minister or Ministers of a State Government.

(Paras 2.22.25 to 2.22.27)

2.43.05 Ordinarily, the Union should occupy only that much field of a Concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and the details for State action within the broad frame-work of the policy laid down in the Union Law. Further, whenever the Union proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the State Governments, individually, but also, collectively, with the Inter-Governmental Council, which as we have recommended, should be established under Article 263. A resume of the views of the State Governments and the comments of the Inter-Governmental Council should accompany the Bill when it is introduced in Parliament.

(Para 2.23.05)

2.43.06 (i) Clause (2) of Article 252 may be substituted by a new clause providing that an Act passed by Parliament under clause (1), may be amended or replaced either by Parliament in the manner provided in clause (1), or also by the Legislature of the State to which it applies, provided no such amending or repealing legislation of the State Legislature shall take effect unless, having been reserved for the consideration of the President, it has received his assent.

(ii) Any law passed by Parliament with respect to a matter in List II under clause (1) of Article 252, should not be of perpetual duration but should remain in force for a specific term, not exceeding three years. The Act itself should contain provisions requiring its periodic review before the expiry of its term. If, after such review, it is considered necessary to re-enact the law in its original or modified form, it may be done for a period not exceeding the original term, by following the same procedure as specified in clause (1) of the Article.

(Para 2.27.04)

2.43.07 When a Resolution passed by the Legislative Assembly of a State for abolition or creation of a Legislative Council in the State is received, the President shall cause the Resolution to be placed, within a reasonable time, before Parliament together with the comments of the Union Government. Parliament may thereupon accept or reject the request contained in the Resolution. If the Resolution is so adopted by

Parliament, the Union Government shall introduce the necessary legislation in Parliament for implementation of the same. If necessary, Article 169 may be amended to provide for this procedure.

(Para 2.33.06)

2.43.08 In order to remedy the unfortunate situation in which the local bodies find themselves, a comprehensive law (under clause (1) of Article 285 read with the saving clause in Entry 32 of List I), analogous to Section 135 of the Railway Act, 1890, and Section 3 and 4 of the Railways (Local Authorities' Taxation) Act, 1941 be passed making liable the properties and administration of all undertakings like Railways, Posts and Telegraphs, Telephones etc. of the Union at such fair and reasonable rates as may be notified from time to time by the Union Government after taking into consideration the recommendations of a person, who is or has been a Judge of a High Court or a District Judge.

(Para 2.35.13)

2.43.09 Cases may arise, particularly in the modern context where States may feel aggrieved on account of taxes imposed by the Union on the trade or business in terms of clause (2) of Article 289. The scheme of the Constitution envisages remedial action under clause (3). Where one or more State Governments feel aggrieved on account of any action of the Union Government covered by clause (2) of Article 289,

adequate consultation should be held with the State Governments or the National Economic and Development Council proposed by us, and action taken to afford relief in terms of clause (3) of Article 289.

(Para 2.36.11)

2.43.10 Before a law is passed by Parliament by virtue of clause (3) of Article 286 read with Entries 92A and 92B of List I, the State Governments and the National Economic and Development Council should be consulted and the resume of their comments should be placed before Parliament along with the Bill.

(Para 2.37.09)

ANNEXURE II. 1

The question whether a particular Union law is attributable *solely* to the Residuary power of Parliament is finally settled by judicial decisions. We have, therefore, studied as many reported decisions of the Supreme Court/High Courts on this point as possible. The Union laws, the constitutional validity of which was questioned, relevant to the enquiry, may be classified into two broad categories": (i) Those with respect to which the competence of Parliament was upheld *solely* on the ground of its residuary power under Article 248/r/w Entry 97 of List I; (ii) those in regard to which residuary power was relied upon as an alternative or additional source of the competence of Parliament.

As a result of our study—which is not claimed to be exhaustive—the following cases fall under the first category:

(a) The Gift Tax Act 1958, imposing tax on gifts of moveable and immoveable property (including agricultural land).

Andhra Pradesh High Court in *Jupudi Sesharatnam V. Gift Tax Officer* (AIR 1960 AP 115.; the Kerala High Court in *M.T. Joseph and other V. Gift Tax Officer* (AIR 1962 Ker. 97) and the Madras High Court in *S. Dandapani V. Addl. Gift tax Officer* (AIR 1963 Mad. 419) are cases wherein the constitutionality of certain provisions of the Gift Tax Act 1958 was challenged on the ground that they encroached upon the subject-matter of Entry 18 of List II in as much as they sanctioned levy of tax on gifts of agricultural land. Overruling this plea, the High Courts observed that the subjects of taxing powers of the Union and the States were mentioned specifically in the Union and State Lists respectively. The taxing power could not, therefore, be inferred as ancillery or incidental to any other entry relating to a legislative matter. It was held that the competence of Parliament to enact the impugned provisions was attributable *solely* to the residuary power of Parliament.

In Mrs. Ghendi W/o Umrao Singh V. Union of India and Others (AIR 1965 Punjab 65) certain provisions of the Gift Tax Act were challenged on the ground that they amounted to an encroachment upon the legislative powers of the States under Entry 49 of List II: (taxing of lands and buildings). The Court held that the gift tax was not a tax on land and building, as such, but on transactions of transfers relating to property. On these premises it was held that the impugned provisions did not fall under Entry 49 of List II, but *entirely* under Entry 97 of List I read with Article 248.

The decision of the Allahabad High Court in *Shyam Sunder V. Gift Tax Officer* (AIR 1967 All. 19) is also to the same effect.

These decisions of the Punjab and Allahabad High Courts were approved by the Supreme Court in *Gift Tax Officer V. D.H. Nazarath and others* (AIR 1970 SC 999). The Supreme Court had held that the Gift Tax Act was enacted by Parliament and no Entry in the Union List and State List mentions such a tax. Therefore, Parliament purported to use its powers derived from Entry 97 of the Union List read with Article 248 of the Constitution. There being no other entry which covers the gift tax, the residuary powers of Parliament were exercised to enact the law.

(All the above cases are in respect of one and the same enactment, namely the Gift Tax Act 1958. In them, the High Courts and subsequently the Supreme Court have held that the Gift Tax Act, 1958 is an Act which is covered solely by the residuary powers of Parliament under Article 248 read with Entry 97 of List I of Schedule VII of the Constitution).

(b) Himachal Pradesh Assembly (Constitution and Proceeding Validation) Act, 1958.

In *Jadab Singh and Other V. Himachal Pradesh Administration* (1960 3 SCR 75). The Supreme Court upheld the competence of Parliament to enact this Act solely by virtue of its residuary power. The facts were these. The Assembly of Himachal Pradesh originally was constituted under Part C States Act, 1951 and elections were held in 1952. A new State of Himachal Pradesh was formed after merger of Bilaspur in 1954. Though the members of Assembly were deemed to continue to represent their constituencies, a notification under Section 74 of the Representation of People Act, 1951, was not issued. A Bill (No. 7 of 1953) has been introduced in the original Assembly. However, by the time it was passed in May 1954, the new Assembly had come into being. The Supreme court in *Shree Vinod Kumar & Others V. The State of Himachal Pradesh* (AIR 1959 SC 223) by its decision of October 10, 1958 invalidated the Act No. 15 of 1954 on the ground that the Legislative Assembly of the new Himachal Pradesh State was not duly constituted and, as such, was incompetent to pass this Act. Parliament then enacted Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Act, 1958. Section 3 of this Union Act validated the constitution and proceedings of the Legislative Assembly of Himachal Pradesh State and Section 4 prohibited the courts from questioning the validity of any Act or proceedings of the Assembly on the ground of defect in its constitution.

The Supreme Court upheld the competence of Parliament to enact the validating Act by virtue of its power under Article 248 read with item 97 of List I.

(c) Sugarcane Cess (Validation) Act, 1961 validated certain Acts of State Legislatures imposing cess on entry of sugarcane into the premises of a factory.

This example is furnished by the Supreme Court decision in *Jaora Sugar Mills V. State of M.P.* (AIR 1966 SC 416) wherein the competence of Parliament to enact the above Act was upheld *solely* on the ground of its residuary power.

The facts of the case were that the Madhya Pradesh Legislature enacted M.P., Sugarcane (Regulation of Supply and Purchase) Act, 1958, levying a cess on the entry of sugarcane into the premises of the factory on the assumption that a factory was within the purview of Entry 52 of List II a 'local areas'. The validity of this State Act was challenged in the High Court. Following an earlier decision of the Supreme Court in *Diamond Sugar Mills Ltd. V. U.P.* (1961) AIR 1961 SC 652, the Madhya Pradesh High Court declared that the State Act was *ultra vires* the State Legislature. Parliament then enacted the validating Act 1961 (mentioned above). The validity of Section 3 of this (Central) Act was assailed before the Supreme Court on the ground that this provision was *ultra vires* the Parliament.

The Supreme Court rejected this plea observing that what Parliament had done by enacting this Section was not merely to validate the invalid State statutes, but “to make a law concerning the cess covered by the said statutes and to provide that the said law shall come into operation retrospectively”. It was held that Parliament's power to levy the cess of this nature under the invalid State Acts was derived from Article 248 read with Entry 97 of the Union List.

This *ratio* of this decision was reiterated by the Supreme Court in *Shetkari Sahakari Shakkar Karkhanas vs. The Collector of Sangli and others* (AIR 1979 SC 1972).

(d) *Punjab Excise (Delhi Amendment) Ordinance* 1979.

M/s. Satpal & Co. etc. vs. Lt. Governor of Delhi & Others AIR 1979 SC 1950. Punjab Excise Act 1914 was extended to Delhi. While implementing the provisions of the Act, the concerned authorities held an auction for the grant of licence for selling country liquor and at one such auction, the petitioner's bid was accepted. The licence included a condition to sell a bottle of 750 ml. of country liquor at Rs. 15 which included the excise duty at the rate of Rs. 10.23. This excise duty was styled as “still head duty”. In a writ petition before the High Court, the levy of “still head duty” was challenged on the ground that it was nothing but counter vailing duty and in the absence of manufacture of liquor in Delhi, countervailing duty on the import of liquor cannot be constitutionally levied. This contention found favour with the learned single judge of the Delhi High Court and a number of letters Patent Appeals were filed against that judgement which were pending in the High Court. In the meantime, the President of India promulgated the Ordinance purporting to amend the Punjab Excise Act with retrospective effect and conferring power on the government under the provisions of the Act to levy special duty on the import of country liquor in Delhi. The Delhi High Court heard the letters Patent Appeals against the judgement of the learned Single Judge and held the Ordinance as well as the impost there under valid and dismissed the writ petition. Against the judgement, the Petitioners preferred Special Leave Petitions before the Supreme Court. The precise question before the Supreme Court was, whether the impugned provision levying import duty on liquor could be defended as an exercise of its List II. The next question was, whether the legislation was beyond the competence of Parliament. Upholding the Validity of the Ordinance, the Supreme Court held that though Parliament could not levy such duty under Entry 51 of List II, it could do so under Entry 97 of List I read with Article 248.

It observed:

“Complex modern Governmental administration in a federal set-up providing distribution of legislative powers coupled with power of judicial review may raise such situations that a subject of legislation may not squarely fall in any specific Entry in List I or III. Simultaneously, on correct appraisal it may not be covered by any Entry in List II, though on a superficial view it may be covered by an Entry in List II. In such a situtation, Parliament would have power to legislate on the subject in the exercise of residuary power under Entry 97, List I and it would not be proper to unduly circumscribe, corrode or whitle down this power by saying that the subject of legislation was present to the mind of framers of the Constitution because apparently if falls in one of the Entries in List II, and thereby deny power to legislate under Entry 97”.

(e) Section 12(2) of the Rubber Act 1947 as amended by the Rubber Amendment Act, 1960, imposing a rubber cess.

(M/s. Jullundur Rubber Goods Manufacturers’ Association Vs. The Union of India and other (AIR 1970 SC 1589). The Rubber Act, 1947, was amended by the Rubber Amendment Act 1960. The Amendment Act—imposed new excise duty either on the

manufacturers or on the owners of the estates. The Petitioners challenged the validity of Amendment Act in so far as it authorised imposition of new excise duty on the use of rubber and its collection by the Rubber Board. It was contended that under Entry 84 of List I the duties can be levied only on the actual producers and manufacturers of rubber but in the very nature of such duty it could not be imposed on users or consumers of that commodity. The Court held that what was called excise duty on power by Parliament under Article 246 read with Entry 51 of the use of rubber which does not fall within Entry 84, List I—"will be a kind of non-descript tax which has been given the nomenclature of the duty of excise", and consequently Parliament had undoubted competence under Entry 97 of List I in the Seventh Schedule read with Article 248 to enact the inpugned provisions.

(f) *The Emblems and Names (Prevention and Improper use) Act* 1980.

M/s. Sable Wagers & Co. and other Vs. Union of India (AIR 1975 *Supreme Court Page* 1172). In this case, the validity of the Emblems and Names (Prevention and Improper Use) Act 1980 was under challenge. So far as the legislative competence is concerned, it was held by the Supreme Court that the residuary power of Entry 97 of List I has wide ambit to take care of particular subject matters of the legislation.

(g) Auroville (Emergency Provision) Act 1980

(S.P. Mittal Vs. Union of India AIR 1983 SC 1*).* Shree Aurobindo Society, was a non-Governmental organisation for a generation of funds for the setting up of a cultural township known as "Auroville" where pepole of different countries are expected to live in harmony as one community and engage in cultural, educational, scientific and other activities aiming at human unity. This society developed a township with the aid from different organisations in and out of India and also from Central and State Governments. Serious irregularities in the management of the society and mis-utilisation of funds were detected. The Government, therefore, took over in public interest the management of "Auroville" by the Presidential Ordinance, namely, Auroville (Emergency Provision) Ordinance, 1980 which was subsequently replaced by Auroville (Emergency Provision) Act, 1980 (Act 59 of 1980). It was held that Parliament had the legislative competence to enact this law by virtue of Entry 97 of List I of the VII Schedule.

(h) Section 24 of the Finance Act, 1969 amending the Wealth Tax Act, 1957.
(Union of India Vs. H.S. Dhillon 1972(2) SCR 33). This case stands as a category apart. In this case, a Bench of seven Judges decided questions of far-reaching importance as to the taxing powers of Parliament and the State Legislatures. The question for determination was, whether S. 24 of the Finance Act, 1969 (S. 24) which amended the provisions of the Wealth Tax Act, 1957, so as to include the capital value of agricultural land for computing the net wealth, was within the legislative competence of Parliament. By a majority of 4 to 3 it was held that Parliament was competent to enact S. 24. Sikri C. J. held that S. 24 fell within Entry 86, List I, read with Entry 97 of List I or/and Article 248. Shelat J. held that S. 24 was *ultra vires* the legislative power of Parliament. Section 24 did not fall under Entry 86 List I, nor did it fall under Parliament's residuary power. However, he held that a power to tax the capital value of agricultural lands as an asset belonged to State Legislatures under Entry 49, List II.

ANNEXURE II. 2

Additions and deletions in the Seventh Schedule

The three Lists under the Seventh Schedule were amended from time to time making certain omissions and additions. Brief details of the changes are as follows—

Union List (List I).

In this List, orginally, there were 97 Entries; 3 new Entries 92A (Sixth Amedment Act, 1956), 2A (Forty Second Amedment Act, 1976) and Entry 92B (Forty Sixth Amendment Act, 1982) were added later. Entry 33 was deleted by Constitution (Seventh Amendment) Act, 1956. Thus, there are 99 Entries, at present.

State List (List II)

This List originally contained 66 entries of which 5 Entries were later deleted—Entry 36 by the Seventh Amendment Act (1956) and Entries 11, 19, 20, 29 all, by Forty-Second Amendment Act, (1976). At present, List II contains 61 Entries.

Concurrent List (List III)
Originally, List III contained 47, Entries, which increased by the addition of five more *viz.* Entries 11A, 17A, 17B, 20A, 33A. All these five were inserted by the Forty-second Amendment Act, 1976. At present, the total number of Entries in this List stands at 52.

ANNEXURE II.3

Table showing amendments to the Constitution made between 1950—1987 (August)

S.No.	Name of the Act	Nature of the Amendment Act
1.	Constitution (First Amdt.) Act, 1951 (Came into force on 18-6-51)	Articles 31A & 31B and Schedule IX were added. Articles 15, 19, 85, 87, 174, 176, 341, 342 & 376 were amended. In Art. 19(2), three new grounds of restriction to freedom of speech & expression viz. (i) friendly relations with foreign states; (ii) public order & (iii) incitement to an offence were added. Art. 31A, 31B & Sch. IX secured the Constitutional validity of Zamindari abolition laws. 13 State Acts which provides for the Zamindari abolition were added in Sch. IX.
2.	Constitution (Second Amdt.) Act, 1952 (Came into force on 1-5-53) (With ratification by States)	Art. 81(1)(b) was amended *inter alia* to provide that the total strength of Lok Sabha would be more than 500.

3. Constitution (Third Amdt.) Act, 1954 Entry 33 of List III was enlarged by transferring the contents of Art. 369, so that
(Came into force on 22-2-55) Parliament could have a concurrent jurisdiction to legislate as regards trade &
(with ratification by States) commence in, and the production, supply and distribution of the commodities included under the entry.

4. Constitution (Fourth Amdt.) Act, 1955 Articles 31, 31A & Sch. IX were amended to make the question of compensation,
(Came into force on 27-4-55) non-justiciable before the Courts. It was also made clear that payment of compensation would arise only in two cases viz., (i) where there was both acquisition and requisition of property and (ii) where there was complete transfer of ownership or the right to possession of an individual to the state. Art. 31A was amended to providing for taking over under the state control for temporary period all commercial or industrial undertaking. Art. 305 was substituted in order to save the existing laws and laws providing for state monopolies. In Sch. IX seven more Acts were added.

5. Constitution (Fifth Amdt.) Act, 1955 Art. 3 was amended to provide for the imposition of a time-limit within
(Came into force on 24-12-55). which the states were to give their views regarding reorganisation of the states etc.

6. Constitution (Sixth Amdt.) Act, 1956. Articles 269, 286 and Sch. VII were amended to give effect to the recommendation
(Came into force on 11-9-56) of the taxation Enquiry Commission regarding Sales Tax; certain other changes
(With ratification by States) relating to taxation of sales or purchases on certain goods were also made.

7. Constitution (Seventh Amdt.) Act, 1956. Articles 80, 81, 82, 153, 158, 170, 171, 239, 240, Schedules I, II, IV and VII were
(Came into force on 1-11-56) amended to implement States. Reorganisation scheme.

(With ratification by States) Articles 238, 242, 243, 259, 278, 306, 379 to 391 were omitted.

Art. 131 was amended to adjust the original jurisdiction of the Supreme Court on account of the abolition of part B states.

Art, 216 was amended and the provision regarding the maximum strength of Judges was omitted. Art. 220 was amended to enable a retired judge of the High Court to practise before the Supreme Court. Art. 224 made certain provisions for the appointment of additional & acting judges in the High Court and in their cases the age of retirement was fixed at 60 years. Art. 230 extended the jurisdiction of High Courts to the Union Territories. Art. 231 provided for the establishment of a common High Court for two or more states.

New Articles 258A, 290A, 350A, 350B, 372A & 378A were inserted.

8. Constitution (Eighth Amdt.) Act, 1959 Art. 334 was amended to extend the period of reservation of Scheduled Castes and
(Came into force on 5-1-60) Scheduled Tribes in the House of People and in the legislative Assemblies in the states and the representation of Anglo-Indian Community in the House of the People and in the legislative Assmeblies by nomination.

9. Constitution (Ninth Amdt.) Act, 1960 First Schedule was amended to transfer certain territories to Pakistan, implementing
(Came into force on 17-1-61) the Indo-Pakistan Agreements.

10. Constitution (Tenth Amdt.) Act, 1961 Art. 240 & Schedule I was amended to make Dadra & Nagar Haveli as a Union
(Came into force with retrospective effect Territory.
from 11-8-61)

11. Constitution (Eleventh Amdt.) Act, 1961. Articles 66 & 71 were amended in order to narrow down grounds for challenging
(Came into force on 19-12-61) the validation of election of President or Vice-President.

12. Constitution (Twelfth Amdt.) Act, 1962. Art. 240 & Schedule I were amended to include Goa, Daman & Diu as a Union
(With Retrospective effect from 20-12-1961) Territory.

13. Constitution (Thirteenth Amdt.) Act, 1962. Art. 371A was inserted to make special provisions for the administration of the state

(came into force from 1-12-62) of Nagaland.
(With ratification by States)

14. Constitution (Fourteenth Amdt.) Act, 1962. Art. 239A was inserted; First Schedule was amended to include some of the former
(some provisions came into force on 28-12-60 French Territories as the Union Territory. 239A enabled the creation of the legislatures
and other provisions from (16-8-1962). & council of ministers for the Union Territories-Himachal Pradesh, Manipur, Tripura, Goa, Daman & Diu and Pondicherry.

15. Constitution (Fifteenth Amdt.) Act, 1963. Articles 124, 128, 217, 222, 224, 224A, 226, 297, 311 & 316 were amended.
(Came into force on 5-10-63) It was provided that the question regarding the age of a judge of Supreme
(With ratification by States) Court or High Court shall be decided by the President. The retirement age of the High Court Judges was raised to 62 years. Provisions were made for appointment on ad-hoc judges. A retire judge of a High Court could practise in the Supreme Court and in all High Courts except one in which he served as a judge for not less than 5 years immediately before his

retirement. Art. 226 was amended to extend the writ jurisdiction of a High Court. Art. 311 modified the procedure for dismissal or removal of civil servants.

16. Constitution (Sixteenth Amdt.) Act, 1963. Art. 19 was amended to enable Parliament to make laws providing restrictions upon
(Came into force on 5-10-63) the freedom of expression questioning the sovereignty integrity of the Union of India
(With ratification by States) with consequential changes in Articles 84, 173 & Schedule III.

17. Constitution (Seventeenth Amdt.) Act, 1974. Art. 31A & Sch. IX were amended. The Term "estate" was given an extended
(Came into force on 20-6-64) meaning 44 new Acts were added to the IX schedule.

18. Constitution (Eighteenth Amdt.) Act, 1966. In Art. 3, explanations were added.
(Came into force on 27-8-66)

19. Constitution (Nineteenth Amdt.) Act, 1966. Art. 324 was amended and the power of the Election Commission to appoint
(Came into force on 11-12-66) Election Tribunal was taken away and their work was entrusted to the High Courts.

20. Constitution (Twentieth Amdt.) Act, 1966. Art. 233A was inserted for the validation of appointments of and judgements etc.,
(Came into force on 22-12-66) delivered by certain District Judge.

21. Constitution (Twenty First Amdt.) Act, 1967. The Eighth Schedule was amended to include "Sindhi" in the list of official languages.
(Came into force on 10-4-67)

22. Constitution (Twenty Second Amdt.) Act, 1969. Articles 244A, 371B and CL (1A) in Art. 275 were inserted to facilitate the
(Came into force on 25-9-69) creation of an autonomous State of Meghalaya within the State of Assam. Later on by
(With ratification by States) the North-Eastern Areas (Reorganisation) Act, 1971 Meghalaya was admitted as a State under First Schedule.

23. Constitution (Twenty Third Amdt.) Act, 1969. Articles 330, 332 to 334 were amended to extend the period of reservation for

(Came into force on 23-1-70) Scheduled Castes and Scheduled Tribes in the House of the People and in the
(With ratification by States) legislative Assemblies of the States and nomination of representation of Anglo-Indians in the House of People and in the State legislatures.

24. Constitution (Twenty Fourth Amdt.) Act, 1971. In Art. 13 a new clause CL (4) was added. In Art. 368, the marginal note was amended.
(Came into force on 5-1-71) The amendments were made to remove the difficulties created by the decision of the
(With ratification by States) Supreme Court in Golak Nath vs. State of Punjab.

25. Constitution (Twenty Fifth Amdt.) Act, 1971. In Article 31(2), the word "compensation" was substituted by the word "amount".
(Came into force on 20-4-72) A New clause (2A) was inserted to make it clear that a deprivation law passed under
(With ratification by States) Art. 31 could not be challenged on the ground that it infringed rights guaranted by Art. 19. A new Art. 31 was inserted to provide that a law passed for giving effect to the Directive principles of State Policy specified in Art. 39(B) and (C) could not be challenged before courts on the ground that it offends Articles 14, 19 & 31. (These amendments were consequent to decision of the Supreme Court in Bank Nationalisation Case).

26. Constitution (Twenty Sixth Amdt.) Act, 1971. Articles 291 and 362 were omitted. A new Article 363A was added and Art. 366(22)
(Came into force on 28-12-71) was amended.

(These amendments were consequent to the decision of the Superme Court in Privy Purse Case).

27. Constitution (Twenty Seventh Amdt.) Act, 1971. Articles 239A and 240 were ameded and new Articles 239B & 371C were
(some provisions came into force on 15-2-71 and inserted.
some provisions came in force on 30-12-71) (These amendments were to bring changes in the constitution of Union Territories).

28. Constitution (Twenty Eighth Amdt.) Act, 1972. Article 314 was repealed and new Art. 312A was added. The new article deals with the
(Came into force on 29-8-72) power of Parliament to vary or revoke conditions of service of the members of Indian Civil Service.

29. Constitution (Twenty Ninth Amdt.) Act, 1972. Schedule IX was amended to include two more State Acts.
(Came into force on 9-6-72)

30. Constitution (Thirtieth Amdt.) Act, 1972. Article 133(1) was amended to remove monetory conditions for filing appeals to the
(Came into force on 27-2-73) Supreme Court in civil matters. (This amendment was based on Law Commission's recommendations).

31. Constitution (Thirty First Amdt.) Act, 1973. Articles 81, 330 & 332 were amended. This relates to the upper limit of the total
(Came into force on 17-10-73) membership of the House of People and also regarding reservation of seats to scheduled castes and scheduled tribes in legislatures.

32. Constitution (Thirty Second Amdt.) Act, 1973. Article 371 was amended and new Articles 371-D & 371-E were inserted. The amendments were to provide certain special provisions regarding Andhra Pradesh.

33. Constitution (Thirty Third Amdt.) Act, 1974. Articles 101 & 190 were amended to provide that the resignations of the members of

(Came into force on 19-5-74) the Parliament and the State legislatures may be accepted by the speaker only, if he is satisfied that the resignation is voluntary or genuine. If it was made under some threat or coercion, if would not be accepted.

34. Constitution (Thirty Fourth Amdt.) Act, 1974. Schedule IX was amended to add twenty more Acts.
(Came into force on 7-9-74)
(With ratification by States)

35. Constitution (Thirty Fifth Amdt.) Act, 1974. Articles 80 & 81 were amended and a new Article 2A was inserted. By these
(Came into force on 22-2-75) amendments.....one seat each in the Lok Sabha and Rajya Sabha was provided
(With ratification by States) to Sikkim representatives. It was however provided that the Sikkimese representatives in Parliament shall not have the right to vote in the election of President and Vice-President of India.

36. Constitution (Thirty Sixth Amdt.) Act, 1975.
(Came into force on 26-4-75)
(With ratification by States)

37. Constitution (Thirty Seventh Amdt.) Act, 1975.
(Came into force on 3-5-1975)

38. Constitution (Thirty Eighth Amdt.) Act, 1975.
(Came into force on 1-8-75)
(With ratification by States)

39. Constitution (Thirty Ninth Amdt.) Act, 1975.
(Came into force on 10-8-75)
(With ratification by States)

40. Constitution (Fortieth Amdt.) Act, 1976.
(Came into force on 27-5-76)

41. Constitution (Forty-First Amdt.) Act, 1976.
(Came into force on 7-9-1976)

42. Constitution (Forty Second Amdt.) Act, 1976.
(Different provisions of the Act came into force on different dates as per notification dated 3-1-1977)
(With ratification by States)

43. Constitution (Forty Third Amdt.) Act, 1977.
(Came into force on 13-4-78)

44. Constitution (Forty Fourth Amdt.) Act, 1978.
(Came into force on 30-4-79)
(With ratification by States)

45. Constitution (Fortyfifth Amdt.) Act, 1980.
(Came into force with retrospective effect from 25-1-80)

46. Constitution (Forty Sixth Amdt.) Act, 1982.
(Came into force on 2-2-83)

47. Constitution (Forty Seventh Amdt.) Act, 1984.
(Came into force on 26-8-84)

48. Constitution (Forty Eighth Amdt.) Act, 1984.
(Came into force on 26-8-84)

49. Constitution (Forty Ninth Amdt.) Act, 1984.
(Published after obtaining the assent of President on 11-9-84).

50. Constitution (Fiftieth Amdt.) Act, 1984.
(Came into force on 11-9-84)

51. Constitution (Fifty-First Amdt.) Act, 1984.

52. Constitution (Fifty-Second Amdt.) Act, 1985.

53. Constitution (Fifty-Third Amdt.) Act, 1986.

54. Constitution (Fifty-Fourth Amdt.) Act, 1986.

55. Constitution (Fifty-Fifth Amdt.) Act, 1986.

56. Constitution (Fifty-Sixth Amdt.) Act, 1987.

The primary object of this Act was to protect the fundamental Rights of citizens and provide adequate safeguards against misuse of authority in future and to ensure to the people themselves an effective voice in determining the form of Govt. under which they are to live with this object.

(i) Articles 19, 22, 30, 31A, 31C, 38, 74, 77, 83, 100, 102, 105, 118, 123, 132, 133, 134, 139A, 150, 166, 172, 189, 191, 194, 208, 213, 217, 225, 226, 227, 239B, 329, 352, 356, 358, 359, 360, 371F & Sch. IX were amended.

(ii) Articles 19 (1)(f); Sub. heading “Right to property” after Arti. 30; and Articles 257A & 329A were omitted;

(iii) Articles 71; 103 and 192 were substituted: and

(iv) Articles 134A, chapter IV in Part XII containing new Articles 300A and 361A were inserted. In Sch.

IX, Entry 87 (The Representation of Peoples Act, 1956). (The Representation of peoples (Amdt.) Act 1974, and the Election Laws Amdt. Act, 1975); Entry 92 (The Maintenance of Internal Security Act, 1971) and Entry 130 (The Prevention of objectionable Matters Act, 1976) were omitted.

Art. 334 was amended to extend the period of reservations made for Scheduled Castes & Scheduled Tribes in legislatures.

(i) Articles 269, 286, 366 and Sch. VII were amended.

(ii) Articles 269, 286 were amended to provide for the Levy of consignment tax & expand the definition of "Sale or purchase of goods".

(iii) In Schedule VII, a new entry 92B—Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person) were such consignment to take place in the course of inter-state Trade or Commerce.

Schedule IX was amended. 14 more State Acts were included to make a total 202.

Clause (5) of Art. 356 was amended to extend the President's Rule in Punjab.

Article 244 and Schedule V were amended to extend the provision of Schedule V to Tripura State.

Article 33 was substituted to cover the application of the Article to armed and other forces and certain other personnel engaged in intelligence etc. of the Union.

Two Articles 330 and 332 were amended to provide for the Reservation of seats for S.Ts. except the S.Ts. in the autonomous districts of Assam, in the House of the People and in the Legislative Assemblies of the States, respectively.

Articles 101 & 102 regarding vacation of seats and disqualifications for membership of Parliament; and Arts. 190 & 191 with respect to State Legislatures were amended to take anti-defection measure. After the 9th schedule to the Constitution, a new 10th Schedule was added with reference to Articles 102(2) and 191(2).

A new Article 371G was added to make special provision with respect to the State of Mizoram.

Two Articles 125 and 221 and Part D of the Second Schedule were amended to provide for higher salaries for Supreme Court and High Court Judges.

A new Article 371H was added to make special provision with respect to the State of Arunachal Pradesh.
A new Article 371-I was added to make special provision with respect to the State of Goa.