

CENTRALISING TENDENCIES

IN

INDIAN FEDERALISM

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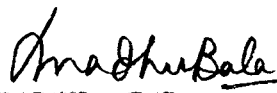
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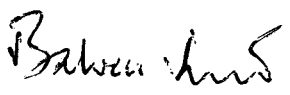
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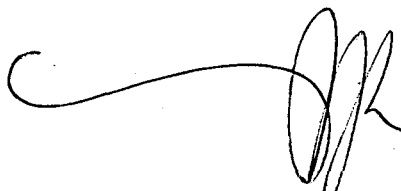
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DECLARATION

Certified that the material presented in this dissertation has not been submitted for any other diploma or degree of this or any other University.


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INTRODUCTORY

Federalism has been one of the most important political developments during the last two hundred years in the modern world. The growing popularity of the federal form of government is evident by the fact that a large number of countries have adopted it specially during the post war period. Writing in 1955 A. J. Macmahon said: "About forty percent of the world's population live in countries with constitutions that call themselves federal, begging the question whether the purported design exists in reality or is negated by a monolith of party or other dictatorial power"¹.

Traditionally speaking, federalism was conceived as a system of governments which involves a certain pattern of relationship between the central government and the regional governments mutually independent of each other. But during the last hundred years or so, under the impact of newly emergent forces important changes have taken place in inter governmental relationships even in the traditional homes of federation like the United States of America. The theory of two governments each supreme in its own sphere, which is the basis of a federation has been modified in practice in all federations in the wake of emergence of various forces.

1. MACMAHON (A. J.), Federalism: Nature and Emergent, New York, Columbia, p.4.

Under the impact of these forces one of the most important tendencies that can be discerned recently in every federation is a tendency towards centralization. With the emergence of welfare state, industrialized society and the need for national planning, the sphere of activity of the central government has increased tremendously. As J. Rivero observes, "the almost invariable trend of economic developments in the last hundred years has been towards a concentration of power resulting in a strengthening of the central authority and the development of bonds of national community beyond the frontiers of the individual states"². Federalism evolved in a society that had not felt the impact of the industrial revolution, but had soon to adapt itself to the new society everywhere, and in the course of adaptation came to subject itself to a process of centralization. This tendency towards centralization has led the national governments to assume influence and control over functions and fields which according to the constitution fall within the scope of the state governments.

The constitution of India is federal in form. B.R. Ambedkar, while introducing the draft Constitution, said:

2. RIVERO (J.), "Introduction to a Study of the Development of Federal Societies" in International Social Science Bulletin, Vol.IV (Spring, 1952).

"Federalism means the establishment of a Dual Polity. The Draft Constitution is Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution"³. But the Indian federation as it has been frequently observed, has a pronounced centralized bias. "The conflicting social forces in India, engaged in competition for ascendancy, exerted divergent pulls and pressures on the drafting of the Constitution, and shaped the form and pattern of Indian federalism in varying degrees"⁴.

The Constitution of India provides for a strong Centre in the federal system - strong Centre in the Indian federal system is a centre which has the strength required to fulfil the purposes for which it has been created by the Constitution. However, the working of Indian federalism in the past has revealed that the Central Government has been able to exercise considerable influence and control over those subjects which fall within the exclusive jurisdiction of the States. That made the Central Government

3. Constituent Assembly Debates, vol. VII, p.33.

4. RAY (ALAL), Inter Governmental Relations in India, Bombay, Asia Publishing House, 1966, p.10.

strong in India, why this centralization of authority was thought to be necessary and to what extent the Central Government has been able to exercise its influence on the states with regard to subjects falling within the delimited jurisdiction of the states are the broader questions with which the present study is concerned.

The present study is not designed to undertake the textual analysis of the Indian Constitution with a view to bringing out its features tending to establish a strong Central Government, but its main aim is to examine the tendency towards centralization in the light of the actual working of the Constitution. The study is planned with the conviction that a better understanding of Indian federalism can be secured by trying to picture its working as a process rather than a set of institutions and procedures whose operation is wholly determined by the legal norms and structures.

The hypothesis which has been examined in the present study is that though the centralistic orientation of Indian federalism is reflected in the character of the scheme of distribution of powers between the centre and the States but it is reflected more significantly in the actual working of the federal system.

The main assumption on which this study rests is that the tendency towards centralization has increased more

significantly after 1965 in the Indian federal system. Before, the extent of centralization was not as significant as it is often made out to be. The scope of the present study is limited since it tends to examine the above assumption with respect to two spheres alone. They are the sphere of finance and the sphere of law and order. The period which has been taken into account for the purpose of analysis ranges from 1965 to 1975.

The present study comprises five chapters. The first Chapter deals with some popular theories of federalism in order to examine the concept of federalism. They generally fall into two categories. They either approach their subject with static models of federalism. Or they consider federalism a dynamic process of evolution which transforms given systems in a centralistic or federalizing direction, as the case may be. The second chapter deals with the historical background of Indian federalism. Every federation has come into existence not as a result of theory but out of necessity for it created by an actual historical situation. The main aim of this chapter is to trace the centralizing tendencies operating in the wake of various legislations passed during the British period and their subsequent impact on the present constitution in making the central Government strong. Apart from this, the main political forces operating at the time of framing of the

constitution which had created the need for envisaging a strong central government in the Constitution of free India have also been dealt with.

The third Chapter of the present study seeks to examine the nature of Indian federalism. In this Chapter itself, an important dimension of Indian federalism i.e. its cooperative nature has also been dealt with. In this context several coordinating mechanisms both constitutional and extra constitutional, have been analysed in order to find out to what extent the Central Government can exercise its influence on the States through these mechanisms. The fourth Chapter deals with the tendency towards centralization in the sphere of finance. In India this tendency has increased at a marked pace specially after the third plan period. The main issues analysed in this Chapter are the strong financial position of the Centre vis-a-vis the States and the impact of planning in fostering the tendency towards financial centralization. Planning Commission has become an important instrument through which the Central Government has been able to exercise considerable influence on matters which fall within the jurisdiction of the States.

In the fifth and final Chapter, another main area of this study - that is the sphere of law and order has been examined. Although maintenance of law and order is a State subject nevertheless, in the last few years the operational dynamics of Indian federalism has shown that the Central

Government has built up a considerable machinery to administer law and order in States. In this context some of the important armed forces of the Central Government viz - the Central Reserve Police Force, the Border Security Force, the Central Industrial Security Force and Assam Rifles have been analysed. Special emphasis has been laid on examining the nature, growth and role of the Central Reserve Police Force which has often been used by the Central Government in the task of maintaining law and order in the States.

The nature of the present study is mainly theoretical since it does not involve any field work. As far as sources are concerned, primary as well as secondary sources have been utilized in this study. However, most of the data has been collected through primary sources such as reports, memoranda, budget papers, newspapers, manual etc.

The study with its narrow scope may suffer from several limitations, nevertheless, within this specified scope an attempt has been made to show the extent of increasing centralization in Indian federalism.

CHAPTER - I

THEORIES OF FEDERALISM

"The rise of modern constitutional government has been accompanied by the establishment of an increasing number of federal schemes"¹. Not only the United States of America, but Switzerland, Germany, Canada, Australia, the Union of South Africa, Brazil, Austria, India, Nigeria, Malaysia, and many other have also evolved a governmental structure of federal type. Although federalism is so much in currency and the federal form of government by no means uncommon, the term 'federalism' is not easy to define. It has been given different meanings and interpretations by different writers. This chapter presents some theories regarding federalism, because it seems desirable to explain the concept of federalism before embarking on the task of explaining and analysing.

There are broadly four different theories regarding federalism viz - classical theory, sociological theory, dynamic theory and bargain theory. They shall be dealt with successively in this chapter.

1. THE CLASSICAL THEORY

The classical or traditional theory of a federal system is exemplified by such writers as A.V. Dicey and

1. FAIRBRICH (C.J.), Constitutional Government and Democracy, New Delhi, Oxford and IBN Publishing Company, 1974, p. 188.

A.E. Freeman². In Canada it has been advanced by E.P. Kennedy and in Australia by Sir Robert Garran³. More recently it is found in K.C. Wheare's oftquoted classic - Federal Government - which is a comparative analysis of some of the characteristics of the four federal systems that are generally regarded by Wheare as federal. His method was to construct a kind of model by isolating the common features of these systems. From an analysis of the constitutional, legal and institutional structure of federations, Wheare concluded that the essential feature of any federal system is the duality of legal sovereignty. Thus, he defined federalism as a "method of dividing powers so that the general and regional governments are within a sphere, coordinate and independent"⁴.

From this starting point he went on to conclude that within a federal system each government should be limited to its own sphere and within that sphere, should be independent of the other. Under this definition a federal form of

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2. DICKEY (A.V.), Introduction to the Study of the Law of the Constitution, London, Macmillan Co., 1939.
 - FREEMAN (A.E.), History of Federal Government in Greece and Italy, London, Macmillan Co. 1893.
 3. KENNEDY (E.P.), The Constitution of Canada, 1534-1537; An Introduction to its Development, Law and Custom, London Oxford University Press, 1938.
 - WHEARE (J.) and GARRAN (R.C.), Annotated Constitution of the Commonwealth of Australia, Sydney, Angus and Robertson, 1901.
 4. WHEARE (K.C.), Federal Government, London, Oxford University Press, 1963, p.10.

political union is contrasted with other forms of union by the distinction that in a unitary system the state governments are legally subordinate to the central government and in confederacy the central government is legally subordinate to the state governments.

Wheare's definition of a federal system leads to the following corollaries for the institutional structure of federations: there must be a constitutional division of legal authority within a federation; each component government must be independent within its own sphere of competence; the division of authority must be clearly laid down in a supreme constitution; the constitution should not be amendable by one level of government alone; there must be an umpire, usually a supreme court, to resolve inter governmental disputes over the boundaries of their legal authority; and each constituent government must operate directly on the people rather than indirectly through the other tier. On the basis of this definition, Wheare classified the constitutions or governmental practice in different countries labelling them as federal, quasi federal or non-federal according to the degree to which they met the stipulated characteristics.

Other exponents of the traditional approach are A.V. Dicey, F.A. Freeman and Sir Robert Garren. All these writers have considered complete independence of the centre and the constituent units from mutual control as the hall-

mark of federalism. According to Freeman, in a federation, "On the one hand, each of the members of the union must be wholly independent in those matters which concern each other member only. On the other hand, all must be subject to a common power in those matters which concern the whole body of the members collectively (....). Each member is perfectly independent within its own sphere"⁵. Similarly Dicey has also considered federalism as a distribution of the force of the state among a number of coordinate bodies each originating in and controlled by the constitution⁶.

Thus, all these writers who have built up a traditional model discover the essence of federalism in complete independence of the general and the regional Governments from each other's control and they emphasise that each Government should be restricted within the limits of its own jurisdiction.

The traditional approach in recent years has fallen out of favour because of its juridical, legal and formalistic character. The dualism on which classical definitions of federalism rests does not apply to any existing system. According to A.H. Birch⁷, "Wheare's approach cannot usefully be applied to many of the federations that have been established successfully or otherwise, since the war. The roll

5. FREEMAN, Op. cit., p.3

6. DICEY, op. cit., p. 157

7. BIRCH (A.H.), "Approaches to the Study of Federalism" in Political Studies, vol. 14, 1966, p.16.

includes India, Pakistan, Indonesia, Malaya and Malaysia in Asia; Nigeria, Libya, Ethiopia, the Mali Federation, Uganda, the Central African Federation in Africa (....). They have all described themselves as federal but hardly any of them conforms to Wheare's model" .

One serious limitation of the traditional approach is that it is too rigid in character and does not take into account the various social, economic and political forces that operate in the social matrix and subsequently influence the federal character of a state. As a result of the social, economic and technological developments of the past hundred years or so it is no longer possible to lay down the distinction of powers between the regional Governments and general Government into two water-tight compartments. As A.H. Birch has pointed out, "the tremendous growth of concurrent powers in the last part of the 19th century and during this century has brought about an overlapping of Governmental functions so that it is difficult to see the various levels of Government restricted to their own spheres"⁸.

During its pre-twentieth century phase federalism was more or less a dualistic polity, "in which the federal and the state Governments pursued virtually independent

8. BIRCH (A.H.), "Federalism, Finance and Social Legislation in Canada, Australia and the United States", London, Oxford University Press, 1955, pp. 290-91.

courses of action during a period when government activity was in any case minimal"⁹. But with the emergence of Welfare State, the need for economic planning and industrialized society, the economic philosophy on which this dualistic federalism was based has become quite outmoded in the present context.

This is an era of the active, public-service state, not that of the negative laissez-faire state. The performance of functions and services is the key-note of modern government, and in that performance cooperation, interdependence, inter-penetration of national and state agencies are inevitable. As the traditionalists virtually ignore the important fact of the dynamics of social, economic conditions, their approach becomes essentially inflexible and static.

2. THE SOCIOLOGICAL THEORY

Analysts have in recent years attempted to redefine the essential character of federal political systems. One of these attempts has been to define federalism in sociological terms. The undisputed leader in this enterprise is C.C. Livingston. In his work, Federalism and constitutional change, his main contention is that federalism is essentially a phenomenon of social diversity rather than

9. LAZAR (L.J.), "Federal State Collaboration in the Nineteenth Century United States" in Political Science Quarterly, vol. 79, 1964 pp. 248-281.

one of constitutional mechanics. As he observes, "The essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal government is a device by which the federal quality of the society are articulated and protected"¹⁰.

Livingston's criteria for testing any constitution as federal or not depends not so much on the institutional arrangements as envisaged in it but on the manner in which these institutions are employed. "The real nature of the society can be examined only by observing how the institutions work in the context of that society. It is the operation, not the form, that is important and it is the forces that determine the manner of operation that are more important still"¹¹.

According to Livingston, federal system of government comes into existence when functional differences are territorially grouped. The social diversities that produce federalism may be of many kinds, for example, difference of economic interest, religion, race, nationality, language, variations in size, dissimilarity of social and political institutions. These diversities which exist, in differing degrees in all societies, are said to be reflected and expressed in political phenomena which Livingston calls

10. LIVINGSTON (W.S.), Federalism and Constitutional Change, London, Oxford University Press, 1956, p.2.

11. Ibid, p.4

'federal instrumentalities'. A fair number of these instrumentalities must emerge before it would be reasonable to describe the federal system as a whole as federal. But no classification can be done because federalism is "not an absolute but a relative term"¹².

Thus, Livingston views federalism as a form of government made necessary by certain diversities in the society that are distributed in a certain way. "Federal government is a form of political and constitutional organization that unites into a single polity a number of diversified groups or component polities so that the personality and individuality of the component parts are largely preserved while creating in the new totality a separate and distinct political and constitutional unit"¹³.

Though, the approach adopted by Livingston is quite broad in its scope, nevertheless, its usefulness as a tool of analysis is somewhat doubtful. A.H. Birch¹⁴ gives three reasons for doubting the utility of this approach. First, it is very difficult to make any firm generalizations about the members of a category of which the membership is undefined, and since the main object of the kind of comparative study undertaken by Livingston is to produce

12. ibid

13. ibid, p.9

14. BIRCH. (A.H.), "Approaches to the Study of federalism", art.cit. p.17.

generalizations, it would seem that the approach is somewhat self defeating. Secondly, Livingston has included a wide variety of phenomena under his heading of 'Federal instrumentalities', including laws, regulations, theories, concepts and attitudes. Propositions based upon this use of language may not be invalid but they are unlikely to be specific enough to be helpful. An example is the proposition that ultimately the instrumentalities enter into and become part of the (psycho-sociological) complex which determine the nature of the instrumentalities. Thirdly, in the main body of his book Livingston is unable to use the conceptual framework which is outlined in the first chapter. Thus A.H. Birch comes to the conclusion that Livingston does not offer us a genuinely novel approach to the study of federalism. 'His introductory chapter is novel, but when he gets down to specific examples, his analysis has the same kind of institutional basis as Wheare's'¹⁵ Though, the sociological approach to federalism as advanced by Livingston suffers from the above defects from analytical point of view, nevertheless, as a theory it has a wider perspective than the traditional or institutional theory.

3. THE DYNAMIC THEORY

An attempt to develop a flexible model of federalism has been made by a number of writers who refer to federalism

15. ibid , p.18

as a process rather than as a static pattern of government. C.J. Friedrich in particular, has adopted the dynamic approach to the concept of federalism. According to him, "federalism should not be seen only as a static pattern or design, characterized by a particular and precisely fixed division of powers between governmental levels. Instead, 'federalism' is also and perhaps primarily the process by which a number of separate political communities enter into arrangements for working out solutions, adopting joint policies and making joint decisions on joint problems; and conversely also the process by which a unitary political community becomes differentiated into a federally organised whole"¹⁶.

In the context of his dynamic approach to the concept of federalism, Friedrich has cited the example of American federalism which, according to him, is the result of its continuing adaptation to changing circumstances.

Friedrich likes to dwell upon the historical variations a given federal system has undergone, as in the case of the United States of America which passed from pre-civil war dualism to a 'Centralizing federalism (1860-1933)' and has since experienced the 'Cooperative federalism' of the New Deal and the 'Creative Federalism' of today both euphemisms for the very substantial role of federal programme in the internal life of the states¹⁷.

16. FRIEDRICH (C.J.), Trends of Federalism in theory and Practice, New York, Frederick A. Praeger, 1968, p.7.

17. ibid, p.8

Friedrich's approach can be applied to other recently formed federations also. For instance, federalism in India cannot be viewed in terms of dualistic federalism as envisaged by the traditionalists. It can be seen as a process rather than as a static pattern, keeping in mind the several changes that have taken place since the inauguration of the constitution.

Friedrich views federalism as the territorial division of power, "It is a kind of division or separation of powers but applied on a territorial basis. This function of restraint may be and often is hidden by the motivation which leads to the establishment of a federal system"¹⁸. Thus, if values, interests, and beliefs exhibit a stable and structured pattern in which the commonly shared values, interests and beliefs are counter-balanced by values, interests and beliefs that are territorially distributed, then a federal development becomes possible. "We can properly speak of federalism only if a set of political communities co-exist and interact as autonomous entities, united in a common order with an autonomy of its own"¹⁹.

This description of federalism can be applied not only to a federal state but also to an alliance, a functional

18. FRIEDRICH (C.J.), Constitutional Government and Democracy, Op. cit., 1974, p.195.

19. ibid, p. 195

association of states, or a union of groups within a state (such as the Council of Europe, British Commonwealth of Nations, and Trade Union Congress). Federalism is said to be the process of federalizing; that is, the process of achieving a union of groups which retain their identity. It follows that federalism may be operating in both the direction of integration and differentiation.

This approach directs our attention to one of the features of post war politics; the development of a wide variety of political systems and organizations in which decision making is divided between a central authority and a number of regional authorities. Following this approach one seeks to identify the factors making for integration and those impeding integration in a variety of situations, and to show that the social and economic forces at work are often the same, even though in one context they contribute to nation building while in another they contribute to international integration. The factors most commonly identified as creating the conditions for federal integration are expectation of economic advantage and the existence of social and cultural bonds which generate a feeling of community.

To view federalism in this way is thus to view it in a broad perspective which draws our attention to its dynamics.

Friedrich's contention is, "all kinds of federal systems have been adopted on the national, international and local

level, as well as in political group life. In course of this activity the former rigid patterns have been dissolving and since mid century the former emphasis on structure and design has given way to a recognition of a federal process. The new stress on process has been stimulated by the study of the social structure and forces which promote the development of a federal regime"²⁰.

The greatest merit of the dynamic approach lies in its appreciation of non institutional factors and circumstances, and of shadings and transitions between federal, unitary and confederate systems. Thus, Friedrich typically rejects too narrow a conception of federalism.

4. THEORY OF FEDERALISM AS A BARGAIN OR CONSTITUTIONAL COMPROMISE

Another approach to federalism which has become quite popular in recent times is the one that views federalism as a bargain or constitutional compromise. The prominent proponents of this approach are W.H. Riker, M.J.C. Vile and R.J. May²¹. They deal mainly with the political aspects of federalism.

20. FRIEDRICH, (C.J.) 'Trends of Federalism in Theory & Practice. Op.Cit, p.77.

21. RIKER, (W.H.), Federalism: Origin, Operation, Significance, Boston, Little, Brown & Co., 1964.

VILE, (M.J.C), The structure of American Federalism, London Oxford University Press, 1961.

MAY, (R.J.), Federalism and Social Adjustment, Oxford, Clarendon Press, 1969.

V.M. Riker's approach focuses directly on the political aspects of federalism. He is of the opinion that a constitution is federal if it provides for two levels of government, each of which has at least one area of action in which it is autonomous, and each of which has "some guarantee (even though merely a statement in the constitution) of its contained autonomy within its sphere"²². He notes that this kind of constitution is always the result of a political bargain which takes place in a historically unique situation. An examination of these situations indicates that these conditions should be regarded as necessary for the striking of a federal bargain.

The first condition is the existence of politicians who wish to expand the area of territorial control, either to meet an external military or diplomatic aggression, but prefer to expand without the use of force. The second condition is the willingness of the asserting politicians to surrender part of their independence, either because they desire protection from an external threat or because they desire to participate in the potential aggression of the federation²³.

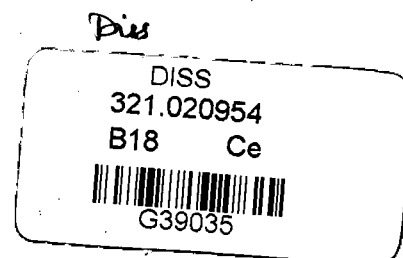
Riker asserts that he has examined all the instances of the creation of federalism since 1787, and that for those

22. RIKER, (V.M.), Op.cit., p.11

23. ibid.



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federal systems that have survived, he has been able to show that the two conditions existed at the time of their origin; and for those federations that have failed he has been able to demonstrate that either the conditions never existed or they existed only momentarily.

Regarding conditions for the maintenance of the federal system, Riker comes to the conclusion that whether or not a federal system survives depends not on the division of Governmental loyalties but on the nature and structure of the parties, which determine how long the system itself is maintained.

Riker's theory of the essentially military origin of federalism has been subjected to criticisms for over-stressing the military-diplomatic factor. It may be noted that Riker is not the first or the only writer to point out the importance of military condition and the desire for expansion as favourable factors in the origin of federalism. Many before him, including Maddox, Greaves and Wheare²⁴ have said so. There is, however, one great difference. While others have regarded these factors as two of the several efficient agents in the creation of federalism, Riker asserts that they are necessary and possibly even sufficient factors

24. MADDUX (W.P.), 'Political Basis of Federation' American Political Science Review, vol. 35, 1941, p.1122.

WHEARE, op. cit.

GREAVES (H.R.C.), Federalism in Practice, London, George Allen & Unwin Ltd., 1940, p.123.

in the origin of the polity. Thus, Riker's thesis rests on the demonstration whether or not both these conditions have been present in every working federation.

Federalism could often be regarded as essentially a limited purpose alliance for mutual military security in the face of a common danger before the rise of modern centralized federalism. With the changed emphasis of modern federalism, however, the military factor can no longer be a sufficient condition for the rise of federalism of the centralized variety. Federations are no longer limited purpose associations.

In spite of these shortcomings in Riker's approach, it has been held in high esteem by A.H. Birch, who regards Riker's attempt to formulate a theory of federalism as "a real, if limited, gain in a period in which it seems fashionable to assume that economic and social factors are pre-eminent"²⁵. Riker's approach to the subject enables him to deal in a specific and useful way with some of the social factors with which Livigston was concerned but which he did not make explicit.

H.J. May has also dealt with the political aspect of federalism. According to him, "The distinctive feature of federal political systems is that the field of public decision making is divided between two 'government' entities, a

25. BIRCH, (A.H.), 'Approaches to the study of federalism', art.cit, p. 33.

central government and a set of unit governments, neither of which can dictate the decisions of the other"²⁶. But despite the formal division of decision making, decisions taken by the central and regional governments affect one another. Because of this interdependence the two levels of government, although they cannot dictate one another's decisions, can and do seek to persuade, influence and bargain with one another.

May further says that what we have in a federation is not two independent political systems, but a single system containing within it a number of overlapping sub-systems. The total output of policies is a product not only of the bargaining which takes place within the central and each unit sub-systems but also of the bargaining which goes on in the total federal system. The nature of the bargaining process will depend mainly on the power potential of the various governments, the rules of the game and bargaining capabilities²⁷.

Studies by Morton Cordzins, Daniel Lazar and Vile²⁸ examining the American Model have also emphasised, the

26. MAY, (R.J.), Op.cit, p.3

27. ibid, p.4

28. CORDEZINS, (M), 'The Federal System' in The Goals for Americans, The Report of the President's Commission on National Goals, New York, Prentice-Hall, Inc., 1960.

VILE, (M.J.C), The structure of American Federalism, Op.cit.

LAZAR (D.J.) The American Partnership in the nineteenth century United States, Chicago, Chicago Univ. Press, 1962.

extent to which inter governmental relations in federation have always involved not only cooperation but at the same time, bargaining, rivalry and even conflict.

In 1961, M.J.C. Vile proposed a new definition of federalism which was soon approved by a number of authors, including Riker, Friedrich, May and Wheare himself. Vile views federalism as a system of government in which central and regional authorities are linked in a mutually interdependent political relationship; in this system a balance is maintained such that neither level of government becomes dominant to the extent that it can dictate the decisions of the other. Usually, but not necessarily, this system will be related to a constitutional structure, establishing an independent legal existence for both central and regional governments and providing that neither shall be legally subordinate to the other. The functions of government will be distributed between these levels (exclusively, competitively, or cooperatively), initially perhaps by a constitutional document, but thereafter by a political process²⁹.

After having a look at the above mentioned theories of federalism, it can be said that each of them has handled the concept of federalism in a different way inspite of some overlapping. Wheare has built up traditional classical model of federalism and his aim is to make possible a detailed comparative study of the small number of federal

29. VILE, (M.J.C.), Op.cit, p.199

systems which conform to his model. Friedrich has elaborated the forces and conditions thought to be mainly social and economic, which facilitate and stimulate the federalizing process. Viker's aim is to establish the conditions claimed to be entirely political which are necessary for the making and maintenance of the federal bargain as he has defined it. Thus, these approaches define federalism in different way. However, at the same time "each of them points to a set of conditions in which a new federation is likely to be created"³⁰.

After analysing these various approaches it can be concluded that federalism cannot be viewed in a rigid narrow sense. The inflexible theory of federalism fails to come close to living realities because while its environment has greatly altered, its formal theory has remained almost static. Thus, in the present context, federalism is to be seen as a dynamic process. In the wake of modern age, federalism is showing a marked tendency towards greater centralization. This also shows its dynamic nature.

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30. BIRCH, (A.H.), "Approaches to the Study of federalism", art.cit., p.21

CHAPTER-II

HISTORICAL BACKGROUND

"Federal Governments" writes Frankfurt, "are the product of economic and social pressures"¹. The driving forces behind it have invariably been the history, circumstances and problems of the country adopting it.

Independent India inherited the tradition of a strong Central Government from the days of British rule. Historical legacy has had a significant impact in making the position of the Central Government so strong under the present constitution of India. Thus, in order to understand the constitutional provisions and the actual working of Indian federalism which deviate from the norms of a conventional federation, it is imperative to delve into the immediate past and trace the evolution of federalism having a strong tendency towards centralisation which Britain left as a legacy on renouncing power. The aim of this Chapter is to trace the trends towards centralization that were operating in the past and which subsequently influenced the federal scheme so envisaged under the present constitution.

The concept of India as an entity is of relatively not distant origin. The sub-continent was a conglomeration of independent states, large and small until 300 B.C., when

1. Quoted by Corry (J.A.), "Constitutional Trends and Federalism" in A.S.M. Lower et.al., Evolving Canadian Federalism, Durham, 1958, p. 96.

the Mauryas consolidated by conquest the northern states into an empire. As Panikkar has put it, "the cultural concept of Aryavarta had its concomitant in the political conception of Bharatvaraha as a single political dominion". This conception had been formulated and accomplished during the period of the great Nandas and Mauryas and "was never lost again and remained a dominant factor in Hindu political thinking."² Although India as a single cultural entity has often succeeded in achieving prolonged spells of political unity, nevertheless, there have been phases of integration and disintegration and rise and fall of empires until the advent of the Moghuls.

The need for concentration of power in a central authority was inherent in the process of consolidation. "The very survival of the ruling dynasty depended on this centralization of authority and its concentration in a chosen and trusted few. The Indian constitution bears the impress of this philosophy of concentration as a logical corollary to the historical evolution of the Indian administrative system, and as being in harmony with the way of life of her people"³.

Centralization was the dominant trend during the Muslim period of Indian history. In the initial stages,

2. PANIKKAR (K.M.), The Determining Periods of Indian History, Bombay, Asia Publishing House, 1962, p. 5
3. CHANDA (ASOK), Federalism in India, London, George Allen and Unwin Ltd., 1965, p. 11

while the Muslim dominion was in the process of expansion, this trend was not so evident. However, things changed after the expansion of the empire had reached its maximum limits. The character of the state then became in form as well as in fact, that of a 'centralized autarchy'⁴. The Mughal emperors concentrated all powers in their own hands, treating provincial authorities whom they appointed and removed at will as mere administrative agents.

The basic factors which, in the long run facilitated the erection of a thoroughly centralized administration during Mughal empire, remained very much in operation when the country passed under British rule. The British were, in fact, more successful than their predecessors in achieving a lasting political and administrative integration of India. In their case the process was assisted not only by the inherent tones of cohesion but also by the development of swifter means of communication and transport. "Once British power had struck roots in the Indian soil, the East India Company sought to follow the Mughal example by taking to the path of centralization"⁵.

The first significant step towards centralization was taken with the passing of the Regulating Act in 1773. For the first time it created a central authority in India for

4. WAJUMDAR (A.C.), An Advanced History of India, Part II, et.al. London, 1956, p. 554

5. BONDELL (K.R.), The Foundation of Indian Federalism, Bombay, Asia Publishing House, 1967, p. 37.

the territories under the rule of the East India Company by vesting in the Governor General of Fort William the power to superintend and control the government and management of the presidencies of Madras and Bombay which until then, were independent of him. The Governors of these presidencies were deprived of the power of declaring war or of concluding peace without the assent of the Governor General-in-Council, except under some special circumstances mentioned in the Act.

Subsequent legislation in 1784 known as the Pitt's India Act further extended the scope of central supervision and control by empowering the Governor-General and council to control the presidency governments in "all such points as relate to any transaction with the country powers, war, peace or to the application of the revenues or forces of such Prooidencies in times of war", and prescribed a penalty to ensure compliance with the Governor-General's Orders⁶.

The Government of India Act, 1793 carried this process of centralization one step further. The new legislation, broadened the scope of Central control by authorising the Governor-General-in Council to "Superintend, Control and direct the several Governments and Presidencies of Port St. George and Bombay not only in political and military matters but also in the collection and application

6. Section 31, 32, 35 and 36.

of the revenues or the forces employed by any of such presidencies ... or the civil and military governments of the said Presidencies"⁷. To facilitate the actual exercise of its powers of superintendence and control by the Central Government, the Act further required the local governments to keep the Governor-General-in-Council fully and continuously informed of their proceedings and acts⁸.

The process of centralization which began in 1773 was brought to its high water mark under the charter Act of 1833. It laid down that the "Superintendence, direction and control of the whole civil and military government of all the territories and revenues"⁹ was vested in the Governor-General-in-Council. The most important feature of the new measure was that it deprived the provincial governments of all powers of legislation they exercised upto then. The court of Directors wrote to the Governor General (in their Despatch No. 44 dated 10th Dec. 1834) that " the whole civil and military government of India is in your hands and for what is good or evil in the administering of it, the honour or dishonour will rebound upon you"¹⁰.

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7. Charter Act, 1793, Clauses 24 and 40
 8. Clause 44.
 9. Charter Act, 1833, Section 39
 10. Report of the Royal Commission upon Decentralization in India, 1909, Para 78, p.22.

Not only in legislation but in finance also, the Government of India became the supreme controlling authority. The sources and rates of taxation, the manner of collection and the authority for expenditure were all dictated from the top. The charter Act 1833 stated categorically that, "no Government shall have the power of granting any new office or allowance without the previous sanction of the Governor General"¹¹. The trend towards complete financial centralization was noticeable till 1871 and was, in fact, a logical corollary of the centralized system perfected in 1833. During this period the local Governments were left with almost no powers of financial control over the affairs of their respective provinces and no financial responsibility. Everything was rigorously centralized. "Thus, the Government of India became the controlling authority in every respect and centralization was complete under the Government of India Act, 1833"¹².

✓ The defects of this extremely centralised system - disharmony, extravagance and irresponsibility - soon became obvious and an opposite trend was noticeable. A new phase of decentralization started emerging.

11. Section 59.

12. RAY (BHARATI), Evaluation of Federalism in India, Calcutta, Progressive Publishers, 1967, p. 27.

Decentralization began with the passing of the Indian Council Act by the British Parliament in 1861, which restored the power of legislation to the Councils of Bombay and Madras. In the sphere of finance, decentralization of a limited character was noticeable from 1870 onwards. Again in 1877, certain heads of revenue were transferred to the Control of the Provincial Governments. This process of decentralization was further carried on under the Indian Councils Act of 1892.

These modest measures of decentralization were informal rather than statutory in character, so far as they did not confer any legally protected autonomy on the provinces. As far as the constitution was concerned, Keith observed that the essential position of the local governments was that of complete subordination in administration and legislation to the centre which exercised also full financial control.¹³

Thus, despite these various measures taken in the direction of decentralization of power, the provinces continued to remain subordinate to the authority of the central government. Under Lord Curzon, administration in India became unitary both in theory and practice. He succeeded in imposing on the provinces a measure of control which was

13. KEITH (A. B.), A Constitutional History of India, 1600-1935, London, Methuen, 1937, p. 183.

"co-extensive with the whole sphere of operations of the provincial governments".¹⁴ The entire Governmental system, therefore, was in theory one and indivisible.

The Morley-Minto Reforms did not constitute any new departure in Britain's policy of governing India. Although, the Government of India Act 1909 considerably enlarged the size of the central and provincial Legislative Councils and added to their powers, nevertheless, the change was one of degree and not of kind. As far as the Centre Province relations were concerned no formal change was made in the constitutional supremacy of the Government of India. "The system of government still remained unitary in principle"¹⁵. The control spelled out in the Devolution Rules fell short of attaining a federal character because of the line of demarcation was "not so definite or rigid as in a federation"¹⁶. Infact, the division was not intended to be "absolutely clear-cut or exclusive"¹⁷. There was, evidently a certain amount of overlapping and blurring of boundaries.

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14. Report of the Royal Commission Upon Decentralization, 1909, Appendix. II.
15. BONDWALL (K.R.), op.cit., p.86
16. SINGH (G.N.), Landmarks in Indian Constitutional and National Development, Vol.I, 1600 to 1919, Delhi, 1950, p. 312
17. Report of the Joint Select Committee on the Government of India Bill, 1919, Part I, Clause I.

The arrangement of the division of functions and resources was only partially federal since, it resulted in a withdrawal of central control over those provincial subjects only which were placed on the transferred list and secondly, "there was still no element of a compact between the Government of India and the provinces, the sanction behind the division being the power of the authorities in Great Britain to whom both the Government of India and the provincial governments were subordinate"¹⁸. An unfederal feature of this distribution of powers of the Secretary of State for India in Council was not at all relaxed and consequently the Government of India did not lose its firm hold on the provincial administrations. Still the provincial governments were considered as agents of the Central Government. Independent provincial legislation was not possible because the sanction of the Governor-General, who had the right to veto, was necessary. The provincial governments were also handicapped in their work by not being allowed any financial control or financial autonomy. They remained entirely dependent upon the financial assistance being provided by the Government of India.

The Government of India Act, 1919 gave a more or less precise and legal form and a definite direction to the

18. BOMBWALL (K.R.), op. cit., p. 105

process of devolution which had been developing over the preceding decades in the shape of informal administrative arrangements. It provided for the first time, for the division of the field of administration into two spheres, the central and the provincial. But the division of functions was that no provision was made for the establishment of an impartial tribunal for the settlement of such disputes as might arise between the centre and the provinces. On the other hand, it was laid down that in case of doubt as to whether a particular matter did or did not relate to a provincial subject, "it was for the Governor-General-in-Council, himself a party to the division of functions, to give a decision"¹⁹.

Though, the provisions of the Act of 1919 made a great advance on the Morley Minto Reforms of 1909, yet no attempt was made to incorporate the Indian States within the new system of administration beyond creating the chamber of Princes to deliberate on such points as were common to their territories and British India. There was no great relaxation of the general processes of superintendence and control by the secretary of state over the administration of India and subsequently excluded the possibility of relaxing control of the central government over the provinces.

19. Devolution Rules, Part I, Rule 4.

The reason for India having a unitary political system till 1919 can be seen in the fact that British India was subject to governments not at two but three levels. At the highest level was the Home Government presided over by the Secretary of State for India who was always a member of the British Cabinet; next to it was the Government of India consisting of the Governor-General in his Council; and at the third level were the Provincial Governments. The Government of India was responsible to the Home Government and it had strictly to obey all its orders and instructions. In law as well as in practice, its position was that of an agent of the Home Government. The responsibility that it owed to the latter could be discharged only when in their turn the provincial governments obeyed its orders and instructions. Neither the Government of India nor the provincial governments could have any autonomy so long as the ultimate authority to govern the country was vested in the Home Government in London²⁰.

From the above description, it is quite evident that the sixty years between the passing of the Indian Council's Act 1861 and in the inauguration of Montford Reforms in 1921 formed a period during which a significant measure of delegation of powers to the provinces took place without making

20. COUPLAND (R.), The Indian Problem: Report on the Constitutional Problem in India, Bombay Oxford University Press, 1944, pp 8-10.

any fundamental change in the centre province relations. In the words of Venkatarangaiya and Shiviah, "During all this period the political system in British India was fully unitary as far as its legal basis was concerned. Though there were two levels of government- Central and Provincial - the control exercised by the Central over Provincial Governments was unfettered and it extended to all fields - legislation, administration and finance"²¹. The new policy of decentralization was not applied with any marked degree of consistency. Thus, although, the period saw a general broadening of the sphere in which provincial governments could exercise some freedom of initiative and decision, nevertheless, formally and constitutionally the authority of the Central Government remained supreme and all embracing.

The Government of India Act 1935, marked a definite mile-stone in the constitutional history of India for it provided for the first time, statutory demarcation of the authority and functions of both general and regional governments. The provincial governments no longer derived their authority by devolutions made by the centre but obtained it as a direct grant from the crown. The administration of the provinces was entrusted to their respective Council of Ministers, fully accountable to a wholly elected legislature.

21. VENKATARAMAIA (M.) and SHIVIAH (M), Indian Federalism Delhi, Arnold Heismann, 1975, p. 19.

Though the Act erected the facade of a federation, it retained in reality the essentials of a unitary form of government²². The autonomy of Indian Provinces was in fact, subject to manifold limitations, and even in the sphere reserved to them by the constitution, the central government could exercise an appreciable measure of control.

The division of powers as it finally emerged, created a very powerful central authority in India and placed significant restrictions on the ambit of provincial autonomy. The distribution of legislative powers embodied in the Act of 1935 was such that it tipped the scale distinctly in favour of the centre. "Centre-Province balance of power finally laid down in the Act of 1935 gave evidence of a considerable degree of centralization"²³. Administrative autonomy of the Provinces was also subject to several restrictions. For example, Section 126 of the Act provided that the executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation and empowered the Federation to give directions to the Provinces in order to ensure the fulfilment of this obligation²⁴. The executive authority of the Federation extended, further, to the giving

22. CHANDA (ASOK), Op. Cit., p.20

23. BOMBSALL (K.R) . Op. Cit., p.211

24. Government of India Act, 1935 . Section 126(1).

of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance²⁵. Finally, the Act provided that in case the Governor-General felt that the directions mentioned above were not being given effect to in any Province, he could, in his discretion, issue orders to the Governor of that Province to get them executed²⁶. Thus, the power conferred on the Federation and the Governor-General under section 126 was a very striking derogation from provincial autonomy.

Even in financial relations between the centre and the provinces, the changes made by the 1935 Act cannot be said to have given complete financial independence to the latter. All elastic sources of revenue had been collared by the Government of India. "The allocation of sources of revenue between the Centre and the Provinces was perhaps the weakest aspect of the federal structure brought into being by the 1935 constitution"²⁷. Thus the Government of India Act 1935 did not do much to change the centralized features of the Indian political system.

The Government of India Act, 1935 had a great impact on the federal system that was envisaged under the present

25. Government of India Act, 1935, Section 126(3)

26. Ibid, Section 126(4)

27. BOMBALL (K.R.), Op. Cit., pp 215-216

constitution. The Act and its working laid the foundations on which, the framers of the Indian constitution raised a new federal structure after the withdrawal of British power. In the Act of 1935, "we find a plaster cast for the pattern of union-State relations set in the constitution of 1950"²⁸. It had a significant impact in setting the tradition of a 'paramount federation'²⁹ in the constitution of free India.

Within the federal framework of the Government of India Act 1935, the extra constitutional control of the Supra Provincial Congress High Command, Congress Working Committee and Parliamentary Board had a far reaching effect on the autonomy of the Congress Provinces. To quote Coupland, "free from the control of the legitimate centre, the Provinces were subjected to a far closer and stricter control by the Congress Centre"³⁰.

Apart from several Acts (passed during the British period) having their impact in creating a strong central Government under the constitution of free India, there were several other factors and forces which were equally responsible for fostering centralized tendencies in the federal system adopted after 26th January, 1950.

28. BOMBAYALL (K.R.), Op.Cit., p. 222

29. SANTHANAM (K), Union State Relations In India, Bombay, Asia Publishing House, 1960, p.17

30. COUPLAND (R.), Op. Cit., p. 96

"The balance of power in the final form of the constitution between the centre and the constituent units is in a large measure determined by a relative strength of the centripetal and centrifugal forces working the society"³¹. There were certain centrifugal forces engaged in a contest with the centripetal forces when the constitution of India was under the process of framing. These forces had a significant effect in determining the nature of Indian federalism.

The movement in the direction of federalism as embodied in the Government of India Act 1935 was the outcome of the existence and operation of three factors - British Imperialism, Muslim Communalism and princely attachment to internal sovereignty. Of these the first represented the forces of unity while the other two represented those of diversity. The equilibrium which existed between them underwent a change in the decade 1937-47. The forces of diversity gained relatively in strength and ultimately it resulted in the partition of the country.

The federal trend was deeply affected by partition. The national pre-occupation with communalism in the years from the late twenties until partition was the forceful influence towards centralization. The effect of communal

31. RAY (AMAL), Inter Governmental Relation in India, Bombay, Asia Publishing House, 1966, p. 9.

tensions on plan for a federal structure is evident in the reports of the Mehru and Sapru Committees.

From the very commencement of its deliberations there was a general agreement among the members of the constituent Assembly (with the exception of those belonging to the Muslim League) that there should be a strong Centre in the federation to be established. But at the same time the Assembly had to face the question of creating a strong Centre inspite of the limitations placed under the Cabinet Mission Plan.

However, after the announcement of the scheme of partition on June 3, 1947 the Constituent Assembly became free from the limitations imposed on it by the Cabinet Mission Plan. Now the framers saw no reason in sticking to the scheme of "a complete unadulterated federation"³². The Union Powers Committee in its second report (July 4, 1947) to the Assembly made some observations of considerable significance, "The severe limitations on the scope of central authority in the Cabinet Mission Plan was a promise accepted by the Assembly(....) in order to accomodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority(...). We have accordingly come to the conclusion - a conclusion which was also reached by the Union Constitution Committee -

32. Constituent Assembly Debates, Vol.IV, 6, Appendix 'A', p. 728

that the soundest framework for our constitution is a federation with a strong Centre"³³.

Thus, the establishment of Pakistan removed the need for a compromise on the strength of the Centre and consequently in the constitution of free India the Centre was given a dominant position.

Another political factor which had its influence in creating a strong centre under the constitution of India, was the integration of five hundred princely states into an organic association with the rest of the country.

The constitutional impact of this significant development on the federal pattern of free India was quite noticeable. Originally the states had to accede in respect of Defence, Foreign affairs and communications. Initially, therefore, the states were placed on an entirely different footing from the British Indian Provinces as constituent units of the proposed federation. The approach of independence and the sudden withdrawal of British Paramountcy minimized the disparity existing between the two category of units (i.e. British Indian Provinces and the Indian States) in the federation.

As the administrative and financial integration of the States went forward, the draft provisions relating to them underwent far reaching changes aiming at removing the

33. RAO (B.S.), (Ed) The Framing of India's Constitution, Bombay, Tripathi Publications, Vol.II, 1966, p. 609.

disparities between their constitutional status within the federation and that of the former provinces. Democratic institutions had not taken root in many Princely states. During the process of integration, the centre had taken the responsibility for bringing about transition from an absolute regime to a democratic order. "Since the Centre took upon itself the obligation to complete the process of integration quickly, its powers of intervention were increased"³⁴.

Thus, the partition of India and the integration of Princely states cleared the decks for the inauguration of a centre-oriented federal union. "The partition of India obliterated the rationale for a loose federation and brought to bear on the deliberations of the constituent Assembly of India the compulsive logic of a cohesive and centripetal union"³⁵. During British paramountcy, the Indian Provinces were not truly and fully sovereign and enjoyed their powers under the tutelage of the British Crown. "The pattern that emerged after the independence established the Hegemony of the Centre"³⁶.

34. KRISHNASWAMI (A), The Indian Union and the States: A study in Autonomy and Integration, London, Pergamon Press Ltd. 1965, p.18

35. SINGHVI (L.M.), "Cooperative Federalism: A case for Establishment of an Inter State Council", in the Journal of Constitutional and Parliamentary Studies, N. Delhi, vol. III, No.4, (Oct-Dec). 1969, p.211.

36. ibid

At the time of constitution making the disruptive forces were already revealing symptoms of revival and this caused a lot of anxiety which was reflected in the preference of the constitution makers for a powerful Centre which would be able to preserve national unity and to defend the country against both internal disruption and external aggression. The constituent assembly achieved this aim by endowing the centre with the monopoly of control over defence, external affairs, means of communication, and transport and with adequate control over finances and by conferring upon it extensive powers to be exercised in times of emergency.

Though, the framers were alive to the need of bestowing a substantial measure of autonomy to the units but they were at the same time moved by the requirements of planned economic development. " The result, naturally, was a federal constitution providing for a central authority armed with a remarkable amplitude of power not only to take care of its own responsibilities but to guide and coordinate the activities of the units"³⁷.

✓ It may, therefore, be stated that the unified control of the Central Government during the British regime, contemporary situation at the time of framing the constitution and the needs of the future were the three factors which influenced the demand for a strong centre in the Constitution of free India.]

37. BOMBWALL (K.R.), Op.Cit., p.274.

CHAPTER - IIINATURE OF INDIAN FEDERALISMSection-IStrong Centre

The framers of free India's Constitution were overwhelmingly in favour of creating a Centre Oriented federation is clear from the preceding Chapter. Now it is to be seen, what actually is the nature of Indian federalism as it has evolved since the adoption of the Constitution.

The classical case of federalism has now undergone a serious transformation owing to significant changes in social, political and economic conditions. The powers of the Central Government have increased more and more, and that too at the expense of the powers of the Governments of the units, that has led to the emergence of the unmistakable trends of the Centralism in every federal system of the world. The result is that national and regional Governments, though coordinate and autonomous in varying degrees, now constitute a 'single system containing within it several overlapping subsystems'¹. It is for this reason, that a modern federal system is said to fall "somewhere between a unitary Government and a loose association of sovereign states"².

1. See DAVIS (R), "The Federal Principle Reconsidered" in Australian Journal of Politics and History, vol.1, No.1-2, 1955-56.

2. DAY (R.J.), "Decision Making and Stability in Federal Systems" in Canadian Journal of Political Science, vol.III, No.1 (March,1970), p176.

Unlike most other federations in the world, Indian federation was formed as a result of a double process. One process consisted in the Central Government in the previously existing unitary system transferring some of its powers to the provinces and making them autonomous in the exercise of such powers. This was unlike the process by which the classical federations of the United States, Australia and Switzerland were formed. "In the case of India the Central Government was the grantor of power while the units (provinces) were its receivers. In the case of the three classical federations the process was quite opposite. The units were the grantors and the Central Government was the receiver"³. This contrast accounts for a large number of special features found in Indian federalism - those which contributed to the strength of the Centre.

The second process by which the Indian federation was formed was by the princely States which were previously outside the British Indian constitutional system becoming part of a single constitutional system, transferring to the Central Government, formed under the system, some of the powers they enjoyed until then and retaining the balance in their own hands. This made the Central Government the receiver and the States the grantors of powers. This was responsible

3. VERMA AND BALGAIYA (M) and DHIVIAN (M), Indian Federalism Delhi, Arnold Heinemann, 1975, p. 28.

for some of the features of Indian federalism under the Government of India Act 1935 and also of Indian federalism as was envisaged in the Constitution of free India in its earlier form.

/ The issue regarding the nature of Indian federalism is not free from controversy. The views of eminent jurists, political scientists and other publicists, in this direction, widely range from those who call it 'federal' to those who dub it as 'unitary' with some others taking the middle position of designating it as 'quasi-federal'. Dr. Ambedkar emphasised that the chief mark of federalism - the partition of the legislative and executive authority between the Centre and the Units by the Constitution itself - has been unmistakably incorporated in the body of the Indian Constitution⁴. Alexandrowics also holds, "India is undoubtedly a federation in which the attributes of sovereignty are shared between the Centre and the States"⁵. On the other hand Prof. Wheare is of the view that the new Constitution has established a "system of Government which is at most quasi-federal, almost devolutionary in character, a unitary state with subsidiary federal features"⁶.

4. Constituent Assembly Debates, vol. XI, p.976, 25th Nov. 1949.

5. ALEXANDROWICS (C.H.), Constitutional Developments in India, Bombay, Oxford University Press, 1957, p. 169.

6. WHEARE (K.C.), "India's New Constitution Analysed", in The Allahabad Law Journal, Feb. 1950, vol. XLVIII, No. 6, p. 22.

On the face of it, the essential marks of federalism are present in the Constitution. The co-existence of two sets of government, their powers being clearly demarcated by a supreme and written constitution which, again, is rigid in character, the presence of an independent judiciary to enforce the Constitution - all these characteristics of the federal structure are to be found in the Indian Constitution. But applying these tests more closely, we have to admit that we do also come across various modifications of the federal principle.

Introduction of centralism of a marked type (not only during the periods of emergency but also during ordinary times) is quite evident in the Indian Constitution. "Consideration of the provisions of the constitution relating to its federal structure shows that, under it, centralism is far more accentuated than under the Act of 1935"⁷. The amplitude of the Centre's authority is an unmistakable characteristic of the division of powers made in the Indian Constitution.

A serious examination of the distribution of legislative powers between the Union and the States leaves the dominant impression of a very strong Centre endowed with the built-in capacity to impose its will on the component units of the federation by means of its qualified legal

7. RAY (BHARATI), Evolution of Federalism in India, Calcutta, Progressive Publishers, 1967, p. 208.

sovereignty. Apart from the scheme of distribution of legislative powers as contained in the three lists, the Constitution provides for Parliament to exercise jurisdiction on matters in the state list under Article 249, 250, 252 and 253. The powers under Articles 249 and 250 are significant qualifications of the federal principle in as much as they provide in effect for a unilateral transfer of the items from the state list to the concurrent list during the period that the resolutions of the council of state or the proclamation of emergency remain operative. Though, because of the exhaustive enumeration of items in the three lists, there is little scope for litigation, the leverage of unilateral extension of the concurrent list has certainly enabled the Union to extend its jurisdiction over any significant part of the state field. Recently, under the 42nd Amendment Act, the legislative scope of the Central Government has been further extended by transferring several items from the State list to the concurrent list⁸. This would further enable the Union Government to extend its field of legislative jurisdiction.

✓ The constitutional provisions relating to the financial relations between the Union and the States reveal more

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8. Entry 11 - 'Education including Universities'
 Entry 19 - 'Forests'
 Entry 20 - 'Protection of wild animals and birds'
 Entry 29 - 'Weights and measures except establishment of standards'.

clearly the centralistic outlook of the constitution makers. The main defects of the scheme of federal finance under the Act of 1935 was the grant of elastic sources of revenue to the Centre and of relatively fixed and rigid sources to the units whose needs were unlimited in terms of welfare services and general development. "The Constitution perpetuated this defect inspite of the fact that the Union Powers Committee of the Constituent Assembly had recognized the inequity of the system"⁹. Although, "the Constitution makes provision for the allocation of resources between the Centre and the States under Articles 268, 269, 270, 272 and financial adjustments are to be made on the basis of recommendations of a Finance Commission, the whole scheme makes the States dependent upon the Centre for its resources. The centralistic trend in the sphere of finance is further reflected in the fact that the statutory grants given to the States under Article 275 on the recommendations of Finance Commission have been gradually overshadowed by the discretionary grants given under Article 282 on the recommendations of Planning Commission which is a centralized agency. This trend towards financial centralisation has become more noticeable especially after 1965.

9. DESHPANDE (N.R.), "Trends in Indian Federalism" in (ed.) Dombwall and Chaudhry, Aspects of Democratic Government and Politics in India, Delhi, Atma Ram & Sons, 1968, p. 238

Thus, the financial system of our country, though federal in form, has come to be of a highly integrated character.

As in the legislative and financial so in the executive sphere, the position of the Union is very strong. Though, the areas of executive authority have been earmarked both for the Union and the States, the latter have become more or less like the vassals by virtue of the colossal power of direction, superintendence and control vested in the hands of the Central Government. The Constitution has empowered the Union Government to issue directives to the States under Articles 256, 257, 339(2), 350A, 353(a), 360(3) and 365. The directives possess an element of compulsion, since their violation by any state would empower the Union Government to call into operation the measures contained in Article 356. During emergency, the power of the Union Government to give directions to the State Governments becomes all the more extensive.

Apart from this, the Centre exercises its administrative control on the States through the instrumentality of All India Services. The members of these services occupy what Ambedkar called, the 'strategic posts'¹⁰ all over the Union. Their service conditions are regulated by Central rules and regulations and their ultimate responsibility lies

10. Constituent Assembly Debates, Vol.VII; pp. 41-42.

to the Centre. The manning of the principal positions in State Governments by the members of All India Services serves to bring certain amount of Central Control over the States.

Thus, the Constitution of India has assigned very wide sweep of administrative power to the Union. The administrative control of the Centre on States has been further enhanced under the 42nd Amendment Act which inserts a new Article 257(A) to empower the Union to send any armed force or other force of the Union for dealing with any grave situation of law and order in any State. Such force shall act in accordance with the directions of the Central Government and shall not be subject to the control of the State Government. Provision is also being made to empower Parliament to define the powers, functions and the liabilities of the members of such force.

Thus, viewing as a whole the scheme of legislative, administrative and financial relations between the Union and the States it may be concluded that the federal system as envisaged in the Constitution tends to establish a very powerful Centre.

Apart from the scheme of distribution of powers between the Centre and the States there are certain other provisions of the Constitution which are equally important in making the Central Government quite strong. For instance, Article 3 of the Constitution empowers the Union Parliament

to alter the boundaries and the name of States or to create new states by splitting or merging existing states or parts of existing states. In taking these actions, Parliament may act by a simple majority. The creation or dissolution of state, thus, would not be a "Constituent act". Though the legislature of the state likely to be affected has to be consulted before Parliament enacts the legislation, the consent of the legislature is not necessary¹¹. In other words, the very existence of the states as units of the Indian federal system would depend on the Union Parliament. K. Santhanam observes that in incorporating article 3 in its final form in the Constitution, "the fundamental principle that a federation depends upon the territorial integrity of States seems to have been forgotten"¹². In the U.S.A., Switzerland, Australia and even in U.S.S.R., the boundaries of units cannot be altered unilaterally by the Central authorities. Concurrence of the units concerned is necessary. We find, therefore, that while India is, like the United States, an 'indestructible' Union, unlike the latter, it is not composed of indestructible States.✓

The Emergency Provisions of the Constitution further tend to make the position of the Central Government much

11. Article 4(2).

12. S. SETHANAM (K), Union-State Relations In India, Bombay, Asia Publishing House, 1963, p.7.

stronger. The emergency provisions which empower the President to assume all authority in respect of the Government of a State in case of failure of its constitutional machinery (Art. 356) do not affect the status of a State permanently; but during the period of the proclamation, the impact of these powers is so deep and comprehensive as practically to transform the federal Constitution into a unitary one in so far as the particular State is concerned. Moreover, during the emergency proclaimed under Article 352, the States become totally subordinate to the Central Government. The States exercise their powers in accordance with the directions given by the Central Government.

Thus, it can be said that the Indian Constitution is heavily weighted in favour of the Centre and the establishment of a strong Central Government is an important aspect of the nature of Indian federalism. In this context it is to be noticed that apart from the Constitutional provisions there are certain extra constitutional factors also which have contributed to the emergence of a more and more unified control of the Indian political system in the hands of the Centre. Among them the role of national Planning, finance and the virtually monopolistic dominance of a single political party at the Centre and in the States is the most conspicuous.

Planning has brought about a considerable uniformity of policy and administration in the economic field cutting across the lines of responsibility drawn by the Constitution. The Planning Commission is held to be the instrument through which a steady shift of power to the Central Government has been manipulated. The Planning Commission has become an important instrument of providing large amount of discretionary grants to the States mainly for plan purposes. In fact the role of the Finance Commission with regard to transfer of resources to the states has been rendered less significant by the Planning Commission. Thus, the national planning and the heavy financial assistance provided by the Centre to the states for the execution of centrally planned and sponsored development projects are the important factors which have tilted the balance of power in favour of the Central Government thereby resulting in a considerable growth of centralization. But here it is necessary to stress that this centralization has been the result of a political situation.

The extra constitutional 'Paramountcy' exercised by the Centre over the States is essentially, the outcome of a single political reason, viz, the virtually unchallenged domination of the Indian political scene by the Indian National Congress. The Congress Party has played a very important part in giving a particular mould to the working of our federal system. Apart from its position of near

monopoly of political power, the congress has a highly centralized organization and its high command has inherited a tradition of strict central control over party organizations and governments in the States. The High Command plays a decisive role in the selection of party candidates for elections to Parliament and State Legislatures, in the choice of State Chief Ministers, in the formation of ministerial teams in the States and in the settlement of disputes between blocs within State party organizations and between the legislative and organizational wings of the party. Thus, the significance of uniparty rule can be seen as a crucial factor in the growth of the predominance of the Centre.

From the above analysis it is quite clear that the strong Central Government as facilitated by the Constitutional provisions and the extra constitutional factors is an important aspect of the nature of Indian Federalism. But at the same time we cannot ignore another aspect of Indian federalism which is its cooperative nature.

The Indian federation though heavily weighted in favour of the Centre, at the same time seeks to foster the spirit of cooperative federalism. Cooperation between the centre and the States or amongst the States has been sought through several mechanisms. Some of these mechanisms have been envisaged in the Constitution while the others are extra constitutional in nature.¹³ But it is seen that even through

13. These mechanisms have been dealt with in detail in the following section of this Chapter.

these several coordinating devices the Central Government can influence the policies of the State Governments to a substantial extent.

An exhaustive analysis of these mechanisms has been undertaken in the following section of this Chapter.

Section - II

Cooperative Federalism in India

Cooperative federalism is an important aspect of the nature of Indian federalism.

Cooperative federalism is a system by which state and national governments supplement each other and jointly perform a variety of functions. The national government, in the new phase, with its greatly enlarged powers and functions has been exercising a great deal of influence even on those spheres of activities which belong to the state governments.

India's Constitution, "lays down the foundations of cooperative federalism in India not by the device of a meticulous balance or an approximate equivalence of power between the Centre and the States, but by emphasising the pre-eminence of the Centre occasionally and somewhat as the Karta in a Hindu joint family"¹⁴. Thus, the Central Government exercises

14. BISHVI (L.K.), "Cooperative Federalism: A Case for Establishment of an Inter State Council, in Journal of Constitutional and Parliamentary Studies, New Delhi, vol.III, No.4, Oct-Dec., 1969, p. 211.

considerable influence in promoting coordination and co-operation among the States.

In this section of the Chapter an attempt has been made to analyse the functional aspect of various coordinating mechanisms both constitutional and extra-constitutional operating in Indian federal system in order to see the extent of Central Government's influence in promoting the spirit of cooperation and coordination among the States.

The Constitution envisages a number of Institutions to regulate and canalise the forces of federalism, to solve inter-state and Centre-State disputes and to promote co-operative federalism consistently with national integration. Among these institutions contemplated by the Constitution are the Finance Commission¹⁵, an Inter State Council¹⁶ and an authority for inter State trade, commerce and intercourse¹⁷. The Constitution also envisages the appointment of a number of high level Commissions both permanent and ad-hoc, for the specific purpose of reconciling diverse and conflicting interests with the cooperation of the Union and the State Governments.

Apart from these Constitutional devices, there are several extra-constitutional institutional agencies which

- 15. Article 280
- 16. Article 263
- 17. Article 307

play rather more vital role in promoting cooperation among the States and at the same time in enhancing the influence of the Central Government on the States. They are Zonal Councils¹⁸, National Development Council of the Planning Commission, National Integration Council and a number of Conferences such as the Governor's Conference, the Chief Ministers' Conference, the Food Ministers' Conference and so on. The fact that there is one party in power at the Centre and the States at present, further enhances the utility of these devices.

The extra constitutional agencies shall be analysed first, followed by the constitutional devices.

ZONAL COUNCILS

Parliament provided for the Zonal Councils after the State Reorganization Carried on in 1956. The States Reorganization Act of 1956 therefore, introduced the new feature of zones and zonal councils for regional coordination.

The Zonal Councils are advisory bodies with authority to make recommendations in regard to matters of inter state or union state concern. The Act under whose authority the Councils originated described their functions. Each council is competent to discuss any matter in which the States interse

18. Though the Constitution does not envisage any provision with regard to the establishment of Zonal Councils, yet they are statutory in character, established under the States Reorganization Act of 1956.

or the Union and one or more of the States are jointly involved, and to advise the Governments involved on the course of action to be taken on such matters. Each Zonal Council is authorized to discuss and make recommendations with regard to -

- (a) any matter of common interest in the field of economic and social planning;
- (b) any matter concerning border disputes, linguistic minorities or inter State transport;
- (c) and any matter connected with or arising out of, the reorganization of the States¹⁹.

Thus, the councils have mainly a two fold purpose: first, to seek cooperation between different zones, and secondly, to assist the States and the Centre in the coordination of various social, economic and other matter²⁰.

The Zonal Councils started functioning from the middle of 1957, and since then they have been regularly meeting.

While opening the first meeting of the Northern Zonal Council on April 23, 1957, the Union Home Minister G.B.Pant spelled out the principal objectives of the Zonal device:

19. The States Reorganization Act, Section 21.

20. SHARMA (P.K.) "Zonal Councils in the Indian Federation", in Economic and Political Weekly, vol.4 (4), January 25, 1969, p. 263.

- i) To achieve an emotional integration;
- ii) To help in arresting the growth of acute state consciousness, regionalism, linguism etc;
- iii) To help in removing the after effects of separation;
- iv) To enable the Centre and the States in economic and social matters to cooperate and exchange ideas and experiences for evolving uniform policies.
- v) To cooperate with each other in the successful and speedy execution of development projects; and
- vi) To secure some kind of political equilibrium between different regions of the country²¹.

In all, five Zones were created on the basis of factors such as geographic location, consideration of economic development of each region, and cultural and linguistic affinity of the people. Each council stood for one of the Zones formed for the North, South, East, West and Central India. As the movement for the reorganization of States continued in different parts of the country, slight changes occurred in the composition of various Zonal Councils. For instance, with the bifurcation of Bombay into the States of Maharashtra and Gujrat, the latter became a member of the Western Zone with Maharashtra, while Mysore shifted to the Southern Zone.

21. See the Agenda of the first meeting of the Northern Zonal Council held at Delhi on April 23, 1957 (Delhi, Parliament Library), Appendix, p. 14.

After the bifurcation of Punjab, Haryana was made the member of Northern Zone. However, the most significant development is the creation of the North Eastern Council on August 8, 1972, in pursuance of the reorganization of the North East Region of India in 1971.

Thus, the position, at present in regard to the scheme of regional coordination, is as follows²²-

Eastern Zone comprising the States of Bihar, Orissa and Bengal.

Western Zone comprising the States of Gujrat, Maharashtra and Union territories of Goa, Paman & Diu and Dadra Nagar Haveli.

Northern Zone comprising Jammu & Kashmir, Haryana, Punjab, Himachal Pradesh, Rajasthan, Chandigarh and Delhi.

Southern Zone comprising Andhra Pradesh, Kerala, Karnataka, Tamilnadu and Pondichery.

Central Zone comprising the States of Uttar Pradesh and Madhya Pradesh.

North Eastern Council comprises Assam, Manipur, Tripura, Meghalaya, Arunachal Nagaland and Mizoram.

The functions of the North Eastern Council are almost similar to that of the Zonal Councils:

- (1) To formulate a unified and coordinated regional plan in addition to State Plans covering matters of common importance.

22. JOURI (J.C.), Indian Government & Politics, Delhi, Vishal Publications, 1974, p. 52.

- (ii) In respect of projects or schemes intended to benefit two or more members, to recommend the manner in which they may be executed, managed or maintained; their benefit shared and their expenditure incurred;
- (iii) To supervise the progress of the implementation of the Plans and the expenditures thereon; and
- (iv) To review from time to time the measures taken by the Governments for the maintenance and security of public order as and when necessary and to recommend further measures in this behalf.

In general, both Zonal Councils and the North Eastern Council are high level advisory bodies.

Each of the Councils includes the Union Home Minister who acts as the ex-officio Chairman of the body . The office of vice-Chairman is held by rotation, for a period of one year, by one of the Chief Ministers of the States included in the Zone. Each State is represented by the Chief Minister and two other ministers nominated by the Governor. A Union territory is represented by two members from the territory nominated by the President. Each Council has a team of advisers for its assistance consisting of a person nominated by the Planning Commission, the Chief Secretary to the Government of each of the State included in the Zone²³. The advisers have the right to take part in the discussions of the Council

23. The States Reorganization Act, 1956, No. 37, (Delhi, Govt. of India Press) Section 16, Clause 4, p. 11.

or of any committee appointed by the council, but do not have the right to vote at a meeting of the council or of any sub-committee. The meeting of each Council is held at such time as the Chairman of the Council may fix²⁴. Since the Chairman of the Councils is the Union Home Minister, the Central Government exercises considerable influence in convening the meetings of the Councils.

All questions at the meeting are decided by a majority of votes of the members present, and in case of a tie, the Chairman or, in his absence, any person presiding has a casting vote²⁵. The Council can, from time to time, appoint Committees of its members and advisers to perform such functions as may be specified in a resolution passed at its meeting. The Committee appointed under such resolution is required to observe such rules of procedure in respect of its business, as are laid down by the Council with the approval of the Central Government²⁶.

Section 21(1) of the Act requires each Council to set up an advisory body, and empowers it to discuss any matter of common interest concerning the constituent states or the Union and one or more of the States represented in that Council and to advise the Central Government and the Government of each State concerned about the action to be taken on any such matter.

24. ibid, Section 17, Clause 4, p.11.

25. ibid

26. ibid, Section 18, clause 3, p. 12.

In respect of a matter of common interest between two or more States belonging to separate zones, a joint meeting of the Zonal Councils at such time and place as the Chairman thereof may fix in consultation with the interested parties has been provided for. The Central Government may make rules regarding the procedure for the conduct of business at such joint meeting.²⁷

The relevant provisions makes it clear that the services of the Zonal Councils can be used in deciding matters of interstate and inter-zonal interest. Matters of interstate cover a wide field, such as irrigation facilities, power transport and communication, technical training, manpower planning, and formation of a common Police Reserve Force²⁸.

The Zonal device has helped in the solution of some outstanding problems between the States. At a meeting of the Eastern Zonal Council held at Calcutta in Sept 1962 the Governments of Assam and West-Bengal agreed to form a common reserve police force. It was decided at the meeting to form a standing committee to review the implementation of the safeguards for linguistic minorities²⁹. Further on 16th July 1966 the Eastern Zonal Council under the presidentship

27. The States Reorganization Act - 1956, Section 22, Clause (2), p. 13.

28. See the Agenda of the fifth meeting of the Northern Zonal Council held at New Delhi on Oct. 22, 1959.

29. The Hindustan Times (New Delhi), September 18, 1962.

of the then Union Home Minister (Shri G.L.Handa) considered the question of providing technical assistance to Nagaland and to review the progress of implementation of safeguards for linguistic minorities in the Eastern Zone³⁰. //

On May, 15, 1967 the meeting of the Southern Zonal Council took place at Ootacamund. Some important matters considered were, purchase procedure and release of foreign exchange for equipment for tied projects; supply position of rice in Kerala, demand of States for central assistance for enhancement of PA of the State Government employees. Subsequently on 19th May, 1967 and on 22nd & 23rd October, 1967, the meeting of the Eastern and Western Zonal Council took place respectively. Important issues discussed were pertaining to cooperation among States in regard to anti-smuggling measures, integrated industrial development of the States and Union territories in the Eastern Zone, and matters relating to integration of services affected by the reorganization of States³¹.

In the year 1968 the Northern Zonal Council and the Western Zonal Council met at Udaipur and Ahmedabad on 2nd February and 30th December respectively. The Western Zonal Council discussed among other things matters relating to division of certain assets and liabilities of erstwhile Bombay

30. Government of India, Ministry of Home Affairs, Annual Report, 1966-67, pp. 57-58.

31. ibid , 1967-68, p. 44.

State, transmission of power from Gujrat to Maharashtra and review of programmes in the implementation of the Family Planning progress in the States of the Western Zone³².

In the year 1969 the Northern Zonal Council held its 11th meeting at Srinagar on 4th October. The Council in this meeting discussed matters of common interest to the States in the Zone, especially matters relating to sharing of irrigation and power projects and provision of employment opportunities. The Council also reviewed land reform measures in the States in this Zone. The central Zonal Council in its eighth meeting on 11th October, 1969, resolved long standing dispute between Uttar Pradesh and Madhya Pradesh in regard to sharing of benefits from Satatila and Rihand Projects. The Southern Zonal Council in its 11th meeting at Bangalore on 6th January 1970, discussed among other things, the question of coordination of facilities for training in medicine, engineering and technology by setting up a regional institution.³³

In the year 1975 the meetings of Eastern, Northern and Western Zonal Councils were held on 3rd Feb. at Ranchi, on 11th June at Srinagar and on 4th Oct. 1975 at Panaji respectively. Matters discussed were relating to improvement of Inter-State highways, to provide safeguards to linguistic minorities, problems relating to power and irrigation³⁴.

32. ibid, 1968-69, pp. 59-60

33. ibid, 1969-70, p. 74

34. ibid, 1975-76, p. 14

The North Eastern Council in its third meeting on 25th to 27th July 1974 discussed the issues relating to Agriculture and allied schemes, irrigation, power, transport and communication. The said council held its fifth meeting on 26th August 1975. The council received a sum of Rs. 10 crores in the form of central assistance on the recommendation of the Planning Commission for the year 1975-76.³⁵

Recently, the central zonal council in its meeting on 11th June 1976 discussed among other things, implementation of the Betwa basin scheme and a proposal for setting up of a joint development board of U.P. and Madhya Pradesh for overall development of the Bundelkhand area. Some other items on the agenda related to maintenance of inter state bridges lying on rivers forming boundaries between U.P. and Madhya Pradesh, share of Madhya Pradesh in Rihand Power, development of telecommunication facilities in U.P. and Madhya Pradesh³⁶.

More recently, in the 15th meeting of the Southern Zonal Council held on October 21, 1976, the Home Minister asked the State Governments to implement with strict measure the recently enacted central legislation prescribing stringent punishment for untouchability offences. " This is an important subject on which the Prime Minister has expressed herself strongly on very many occasions. I would, therefore,

35. ibid., 1974-75, 1975-76.

36. The Hindustan Times(New Delhi), June 12,1976

request all State Governments to devote their concerted attention to this"³⁷, he said.

From the above description, it is quite clear that the Zonal Councils have been meeting quite frequently to discuss the matters of common interest. An assessment of the working of the Zonal System brings out the fact that this device has proved itself to be a significant accompaniment to cooperative federalism. At the same time it is also to be noted that the central Government plays a significantly influential role in coordinating the activities of the various Zonal Councils. The fact that the Union Home Minister, is the Chairman of all the Zonal Councils, enhances the authority of the Central Government to exercise its influence in the meetings of the Councils. Through the device of the Zonal System the Central Government has played a dominant role in bringing about implementation of its policies in the States. In the words of Benjamin N. Schoenfeld, " A review of the work of the Zonal Councils shows that its principal role has been to carryout the programme of the Centre in a given policy developed in the nation's capital. The Zonal Councils have discussed the ways and means of implementing the policy of the Centre in matters of food policy, conservation, saving and water conservation"³⁸. The central Government was successful in

37. The Hindustan Times (New Delhi), Oct. 22., 1976

38. SCHOLENFELD (B.N.), Federalism in India, Washington U.S.A., Public Affairs Press, 1959, pp.17-18

implementing the three language formula in each State through the effective machinery of Zonal Councils.

Thus, the Zonal system has facilitated cooperation at two levels e.g. between the Centre and the States and amongst the States. But the Central Government plays a dominant role in the meetings of the Zonal Councils especially when the same party is in power at the Centre and the States.

NATIONAL DEVELOPMENT COUNCIL:

The National Development Council is another important extra constitutional agency in the direction of promoting cooperative federalism in India.

It was at the suggestion of the Planning Commission that the National Development Council was constituted in August 1952, to serve as the highest reviewing and advisory body in the field of Planning³⁹. The aims of the Council are as follows:

- (i) To strengthen and mobilize the efforts and resources of the nation in support of the Plans;
- (ii) To promote common economic policies in all vital spheres;
- (iii) To ensure the balanced and rapid development of all parts of the country.

To secure these aims the council has been entrusted with the following functions:⁴⁰

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39. Government of India Resolution (Cabinet Secretariat) No.62/CP/50, of August 1952.
 40. RAY (AMAL), Op.Cit, p. 118.

- (1) To review the working of the National Plan from time to time.
- (2) To consider important questions of social and economic policy affecting national development.
- (3) To recommend measures for the achievement of the aims and targets set out in the National Plan, including measures to secure the active participation and cooperation of the people, improve the efficiency of the administrative services, ensure the fullest development of the less advanced regions and sections of the community and through sacrifice borne equally by all citizens, build up resources for national development.

The Council's membership included the Prime Minister, the Chief Ministers of all the States and the members of the Planning Commission, other Union and State Ministers were invited to attend the Council's meetings when considered necessary. "Over the years a practice developed according to which most of the Union Cabinet Ministers as well as some of the Ministers in the States specially the Finance Ministers, were invited to attend the National Development Council's meetings"⁴¹. After the recommendation of the Administrative Reforms Commission in 1967, the Government constituted the NDC to include as members all Union Cabinet Ministers - in addition to the Prime Minister,

41. PARANJAPÉ (H.K.), "Centre State Relations in Planning", in (ed.) Jain, Kashyap, Srinivasan, The Union and the States, Delhi, National Publishing House, 1972, p. 211.

the Chief Ministers of the States, and the members of the Planning Commission⁴².

Thus, from the composition point of view Centre has become more dominant than it was before 1967.

In its functioning the Council has developed into what K. Santhanam calls, " a super cabinet of the entire Indian federation, a cabinet functioning for the Government of India and the Government of all the States"⁴³. The assumption of this unique position can be attributed to no specific constitutional provision nor to any particular statute, but to the composition of the Council itself. The dominant position of the Central Government in the CWC seeks to influence the decisions put forward by the State Governments in the periodic meetings of the Council. " A review of the work of the Council would show that it is by and large a vital machinery for getting the policy decisions of the Union Cabinet, adopted generally on the suggestions of the Planning Commission accepted by the States. The Council at its periodical meetings takes a number of important decisions which are virtually the decisions of the Union"⁴⁴. Some specific instances illustrative of the centralist direction of the Council's decisions may be seen.

42. Government of India Resolution (Cabinet Secretariat) No. 65/15/CF-67 dated Oct. 7, 1967.

43. SANTHANAM (K), Union State Relations In India, Bombay Asia Publishing House, 1960, p. 47.

44. RAY (ANAL), Op.Cit , pp 118-119.

For example, in 1957 the Council decided that " an additional Central excise duty would be levied on mill made textiles, sugar and tobacco in substitution for the sales taxes then levied by the State Governments on these products. That was a vital decision and in so far as the States were concerned. In 1962 the council accepted a proposal of the Union Finance Minister that the Centre alone would enter the market for loan during the next financial year"⁴⁵.

Though, the Council is consulted in shaping and formulating the plan at different stages, nevertheless, its role has all along been a formal one. "It has neither the time nor the expert knowledge needed to scrutinize the Plan as drafted by the Planning Commission"⁴⁶. No effort has been made to organize the NDC on a more efficient basis. The Council has no fixed secretariat of its own. "The Plan schemes are sent to the members of the Council a short time before it meets and no time is left for the members to give them due consideration"⁴⁷. Thus, the National Development Council is just a formal body which meets for a short time. It is the Planning Commission which plays the actual role in giving a final approval to the State Plans.

45. ibid, p. 119.

46. Report of the Study Team on Centre State Relations, (ABC) Vol. I, 1968, pp. 102-104.

47. SETALVAD (MS.), Union and State Relations under the Indian Constitution, Calcutta, Western Law House, 1974, p. 130.

Although frequent discussions between the commission and the concerned State representatives take place before a State Plan is finalised by the former. But in the end, it is the views of the Planning Commission that prevail. Actually speaking, with regard to individual schemes within a sector of development, "a state as a rule is in a better position to assess the claims of different schemes in relation to its own needs and capacities. These vary from state to state and yet uniform schemes with regimented patterns are suggested by the Centre"⁴⁸.

Thus, it can be said that the National Development Council - a body which was established with the objective of giving ample opportunities to the states to participate in the formulation of Plan and its implementation has not been able to attain this objective in true sense of the term. Still the Planning Commission which is a centralized agency has a dominant role in approving the outlays for State Plans. This gives an opportunity to the central Government to exercise its authority and influence on the States. Therefore, what appears to be desirable is that the State members of the Council should be put in a position to appreciate and deal effectively with all aspects and implications of the proposals put before them"⁴⁹.

48. Report of the Study Team, op.cit, p. 110.

49. JETALVAD, Op. cit. , p. 130

NATIONAL INTEGRATION COUNCIL:

Another informal agency that has been instituted to promote coordination among the States and specially to promote the spirit of integration is the National Integration Council.

The National Integration Conference (28th Sept. to 1st October, 1961), set up a National Integration Council to review all matters pertaining to National Integration⁵⁰. The Council was comprised of the Prime Minister, Union Home Minister, Chief Ministers of States, Seven leaders of political parties, the Chairman of the University Grants Commission, two educationists, the Commissioner for scheduled castes and scheduled tribes and seven other members nominated by the Prime Minister. The Conference recommended the adoption of the 'three language formula' for secondary education. This formula envisaged the compulsory teaching of three languages in schools; the regional language and English together with Hindi in the non-Hindi States and another modern Indian language in the Hindi speaking States. Subsequently, the Union Government introduced in April, 1963 the official language Bill in Lok Sabha which was finally adopted by it on 27th April 1963, and by Rajya Sabha on May, 7.

50. Government of India, Ministry of Home Affairs, Annual Report, 1968-69, p. 57.

The National Integration Council held its first meeting in June, 1962. The problems that were considered by the council related to education and regional and communal tensions⁵¹. The Council also appointed the Committees of National Integration and Regionalism and National Integration and Communalism. However, in the context of the upsurge of national solidarity following Chinese invasion, these Committees adjourned sine die in Nov. 1962, and there was also no further meeting of the Council⁵².

However, the National Integration Council was reconstituted in 1968 as communalism and regionalism continued to pose serious problems. The composition of the reconstituted council was broadly as that of the Council constituted in 1961, but some changes were taken into account. The principal changes in the composition related to increase in the representation of political parties represented in Parliament, increase in the number of educationists on the Council and adequate representation to trade Unions and to business and industry. The strength of the Council increased from 39 to 55 members.⁵³

The reconstituted National Integration Council held its first meeting at Tringee on June 20, 1968 and adopted a declaration of objectives, and made specific recommendations

51. ibid

52. ibid

53. ibid

relating to Communal aspects, regional aspects, educational aspects and mass media. The council also set up a standing committee to watch the course of implementation of its recommendations.

The Standing Committee of the Council met for the first time on October 26, 1968⁵⁴ and reviewed the progress made. It also approved a specific 'scheme' for the implementation of the declaration of objectives adopted by the National Integration Council.

The Standing Committee of the Council held its second and third meeting on March 20-21, and October 16, 1969. In the third meeting special consideration was given to the communal situation in the country in the wake of the disturbance in Gujrat during September, 1969.⁵⁵

Among the various recommendations of the National Integration Council implemented so far, special mention is to be made of the enactment of the criminal and election laws amendment Act, 1969 which came into force with effect from the 4th September, 1969⁵⁶.

The fourth meeting of the Standing Committee was held on Nov. 5, 1970⁵⁷, in which the consensus emerged in favour of going ahead with the mass campaign in favour of communal harmony.

54. ibid.

55. Government of India, Ministry of Home Affairs, Annual Report, 1969-70, p. 70.

56. ibid

57. ibid, 1970-71, p. 20.

By the year 1971-72, fifteen States and five Union Territories had constituted State level Integration Councils and Committees. These committees and councils had been getting directions and instructions from the National Integration Council from time to time.

Keeping in mind the importance of the National Integration Council, plea has been made to reconstitute the Council as a broad based national institution and to vest it with constitutional or statutory status⁵⁸. The need for reviving the National Integration Council with an enlarged scope has been felt by the Union Home Minister⁵⁹. Thus, two Committees had been set up to study the matter of reviving the Council. One of them was examining the desirability of incorporating in the Council such functions as eliminating violence in any forms, especially communal violence, safeguarding the just rights of minorities and discouraging discrimination against Harijans and Adivasis. The task before the other Committee covered education, mass media, students and youth.

Recently in the two days conference on national integration held on Oct. 1, and 2, 1976, the Home Minister Brahmanand Reddy called for launching a programme on the "political plane" to consolidate the gains of the emergency and achieve a

58. SINGHVI (L.M.), "Plea to Reconstitute Integration Council", in the Hindustan Times (New Delhi), April 18, 1976.

59. The Hindustan Times, May 21, 1976 (Statement given by the Union Home Minister Brahmanand Reddy in Rajya Sabha).

permanent national integration.

Recently, the Working Group on National Integration has evolved a seven-point action programme for achieving communal harmony and an eight-point programme for preventing discrimination and atrocities against Harijans. The group's decisions cover a variety of problems affecting national integration, such as student and extremist violence, industrial relations, hardships to minorities including those in respect of employment, harassment of Harijans in some places and regional imbalances⁶⁰. It has also made recommendations regarding regional harmony and steps to reduce regional and linguistic tension. With regard to industrial relations the Working Group has recommended that efforts should be made to have one Union in one industry, in the interest of increased production and elimination of violence⁶¹. With regard to promote regional harmony the Working Group recommended that the concerned State Governments and the Planning Commission should examine the causes of regional imbalances in economic development persisted in the 4th Plan and earlier Plans.

The above analysis shows that the National Integration Council is quite a significant informal agency to promote regional coordination and national integration.

60. The Hindustan Times (New Delhi), November, 29, 1976

61. ibid

Apart from the informal coordinating mechanisms discussed above, the Indian federation has also evolved conference techniques facilitating smooth union-state relations and inter level cooperation. Periodical conferences between the representatives of the Union and the States have become a regular feature of the operative machinery of Indian federalism. The conference devices are designed to secure solution of host of problems of mutual concern through discussion and cooperation.

The conferences take place at political, administrative and professional levels. The Chief Ministers' Conference and the Conferences of Ministers of different departments⁶² are examples of conferences at the political level. They have been in existence for a fairly long time and at least two of them, the Chief Ministers' Conference, and the Food Ministers' Conference, are even of pre-independent vintage.

The Conferences at the administrative level include the Chief Secretaries Conference and the Conferences of various functional secretaries. They are all ad-hoc. While the Central Minister concerned presides over the conference held at the political level, the secretary in the Central department acts as the Chairman in the Secretaries Conference.

62. There are a number of such conferences, e.g. The Wood Ministers' Conference, The State Education Ministers' Conference, The State Home Ministers' Conference, The State Finance Ministers' Conference, The State Education Ministers' Conference, the State Housing Ministers' Conference so on and so forth.

The Conference of Chief Justices of State High Courts, presided by the Chief Justice of India, the Conference on Irrigation and Power attended by State Governments engineers and heads of river valley projects and the Conference of Vice-Chancellors are among the conferences held at the professional level although the first one does not fall within the executive branch of the Government.

Now, few of these conferences shall be dealt with in order to analyse their functioning in promoting coordination between the Centre and the States. They are (i) The Governors' Conference, (ii) the Chief Ministers' Conference, (iii) The Chief Secretaries' Conference, (iv) The Conference of Inspectors General of Police, (v) The Conference of Municipal Corporations.

The first two are functioning at the political level. The next two are officers' conferences operating on the administrative plane. The last one deals with local government and its problems.

The Governors' Conference:

The Governors' conference held regularly since the inauguration of the present constitution is historically, a continuation of a much older arrangement under which the governor-general used to call the conference of governors who, under the earlier dispensation, were the real, not

nominal executives. The Governors' Conference meets annually each meeting continuing for two days. The President of India is the Chairman of the Governors' conference. The Vice-President and the Prime Minister also attend; other Central Ministers are also invited, depending on the agenda. The agenda of the conference consists of items suggested by the Central Government as well as those sent by individual governors. Generally, the Governors' conference holds its discussions under two heads, namely, Law and order and development.

The rationale of the Governors' conference lies in its being a source of information to the Central Government on matters concerning the States, which is independent of the State-Governmental machinery. This is a forum where the President appointed governors apprise the President directly with the political, social and economic situation in their respective States.

Recently in the Governors' conference held on 19th and 20th March 1976, a clear consensus emerged in favour of amending Article 226 of the Constitution to restrict the powers of the High Court to issue writs, and to evolve a national family Planning Policy. The Governors were asked by the President to see that Programmes designed for the benefit of weaker and vulnerable sections were faithfully implemented. Special mention was made of land reforms,

provisions of house sites for landless, abolition of bonded labour, liquidation of rural indebtedness and assurance of minimum agricultural wages⁶³. In this Conference the Prime Minister asked the Governors to keep constant vigil to check such evil practices as untouchability⁶⁴.

It is seen that the Central Government is able to play a dominant and influential role in the Governors' Conference specially when the same political party is in power at the Centre and in the States.

Chief Ministers' Conference:

The Chief Ministers' conference is the summit meeting of the Chief executives of the central and State Governments. The Chief Ministers' conference dates from 1946 when Vallabhbhai Patel, the Home Member in the interim Central Government, convened the Premier's conference to secure agreement to the formation of the 'Central Administrative Service' and the Indian Police Service. It has been meeting every year since then, the frequency in a certain year depending upon the gravity of issues warranting notice of Chief executives as well as the predictions of the central leadership.

The Chief Ministers' conference discusses the whole range of matters concerning the States except, of course,

63. The Hindustan Times, 20th March, 1976

64. The Hindustan Times, 21st March, 1976.

the Five Year Plan, for which the appropriate forum is the National Development Council. The Chief Ministers' conference meets more frequently than the National Development Council and is convened as and when some problem considered to be of sufficiently wide importance so as to deserve the direct attention of the Chief Ministers arises. It usually holds a two days' session. The Prime Minister presides over the Conference which is also attended by other Central Ministers concerned with the agenda of the meeting. "The items for the agenda are submitted by both the Centre and the States although, in practice, the initiative has always rested with the Centre"⁶⁵.

The Chief Ministers' conference is potentially an important forum for the discussion of issues and harmonisation of relationship between the Centre and the States. It is the only forum where the consensus of the States on emerging problems may be ascertained. Consequent upon the weakening of the Central Government after the fourth general elections in 1967, the Chief Ministers' conference emerged as a powerful body to discuss and regulate the Centre State and even inter-State issues. But after 1971, the

65. BHAMBHAWARI (S). "The Centre, State Consultative Machinery In India" in the Journal of Public Administration, vol. XVI, July-September, 1970, No.3, p. 441.

Central Government has once again become very strong. By virtue of the fact that the same party holds power at the Centre and in most of the States after 1971, it becomes easier for the Central Government to obtain consensus on important issues discussed in the Chief Ministers' conference. In such a situation the Central Government can even persuade the Chief Ministers to agree to the proposals initiated by the former.

In the Chief Ministers' conference held on 5th and 6th March, 1976, the Prime Minister stressed that land reforms must be supported by measures to give credit and inputs, to re-vitalise local industry through new forms of organization and imaginative application of science and technology. She called upon the Chief Ministers to set a definite time schedule for the speedy implementation of land reforms and urged the need to simplify reforms laws⁶⁶.

The Chief Secretaries Conference:

The Chief Secretaries' conference is attended by the Chief secretaries of States and presided over by the cabinet secretary in the Central Government. The first conference was held in 1965 to discuss the law and order situation in the country and although it was expected to become an annual occurrence it has not been meeting regularly. The agenda discussed in the Conference consists of items sponsored by

66. The Hindustan Times (New Delhi), March 6, 1976

both the Central Government and the States. Like the Chief Ministers' conference, this forum apparently finds nothing which it is prohibited from discussing; it is an open-ended conference. And, "it is this 'open-endedness' which severely restricts its utility as a form for meaningful discussion"⁶⁷. As it is called upon to discuss the whole gamut of subjects concerning the States, it should meet for a much longer duration.

Yet, there is a rationale for a body like this, which lies in the steering work it may accomplish for the Chief Ministers' conference. Its utility flows directly from the inevitable imperfection of the Chief Ministers' conference: as the Chief ministers cannot spare much time to discuss problems in a detailed way, it may be necessary for the Chief Secretaries to meet and engage in depth examination of the issues.

The Conference of Inspectors-General of Police:

The inspector-general of Police of the States meet to discuss matters like crime, law and order as well as those relating to the Police. As crime is not a respecter of State boundary, a conference like this ensures its examination from the national angle and measures to curb it may also be devised in a co-ordinated way. Secondly, the Centre maintains its own Police establishments like the

67. MAJSHUKATI (S), art. cit., p. 442.

Central Reserve Police Force and the Border Security Force which have necessarily to operate in close cooperation with the machinery of law and order of the States; this conference gives its thought to the development of a coordinated approach to such operational problems.

The conference of inspectors-general of Police meets bi-annually each meeting continuing for three days. It discusses issues like crime situation in the country, suppression of immoral traffic in women and children, crowd and traffic control etc.

The inspector-general of Police constitutes the third tier in the States police hierarchy, the first two being the Minister and the Secretary in the Police or Home Department. By convening the conference of Inspector-General of Police the Central Government has extended its span of consultation right up to the level of the State directorate.

The Conference of Municipal Corporations:

Dating from 1959 the Conference of Municipal Corporations originally known as the All-India Mayors' conference, is convened by the Central Ministry of Health, Family Planning, Works, Housing and Urban Development. To begin with, it was a forum of mayors of Municipal Corporations in the country. Its scope was later enlarged by including Municipal Commissioners also, and it has since been called

the Conference of Municipal Corporations. The Central Minister for health presides over its meeting which normally continues for two days. " By convening a conference of Municipal corporations the Central Government has for the first time devised a direct bridge with the local governments in the country"⁶⁸. Local Government is a State subject under the constitution and is the direct responsibility of the State. The Central Government's attempt to forge a direct link with the local governments restricts the authority of the States.

The above description of conferences makes it quite clear that they are a significant forum to discuss important issues of mutual concern of the Centre and the States. The dominance of single political party at the Centre and in the States further facilitates the smooth functioning of these conferences. It is observed that after 1971 the Central Government has been able to exercise its influence in these conferences to a considerable extent.

Thus, it can be said that these informal agencies play a vital role in promoting coordination between the Centre and the States and amongst the States themselves.

Now, some of the constitutional devices shall be analysed.

68. MAHESHWARI (S)., Local Government in India, New Delhi, Orient Longmans, 1970, Chapter III.

Inter-State Council:

It is inevitable that, in a country of the dimensions of a sub-continent like India inhabited by vastly differing strata of populations in varying stages of development, tensions should arise between the general and the regional Governments. Article 263 of the Constitution embodies a vital scheme intended to bring about the smooth running of the parallel Governments in the sub-continent.

Placed under the sub-heading "coordination between States" it reads thus:

"263. If at any time it appears to the President that the Public interests would be served by the establishment of a Council charged with the duty of -

- (a) inquiring into and advising upon disputes which may have arisen between States;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better coordination of policy and action with respect to that subject;

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure".

The Inter-State Council has not been established so far. Its establishment has been recommended by the ARC

Study Team on Centre-State Relations⁶⁹ as well as by the Administrative Reforms Commission⁷⁰. The Administrative Reforms Commission recommended that this council should consist of the Prime Minister, the Finance Minister, the Home Minister, the leader of the opposition in Lok Sabha, five representatives, one each from the five Zonal Councils and such central cabinet ministers or Chief Ministers as are concerned with a particular subject under discussion.

Although, Inter State Council has not been established so far, but Article 263 has already been availed of, and, under its provisions, a Central Council of Health, a Central Council of Local Self-Government and four regional Councils for Sales-tax for the northern, eastern, western and southern zones have been established by the President for considering matters of common interest regarding health, local self-government and sales-tax. It is true that similar councils have not been set up to consider some more pressing questions facing both the Union and the States. "The reason for this is perhaps to be found in the political alignment of parties which made the Congress Party the dominant party at the Union and the state level in most states till the general elections in 1967".⁷¹ Now

69. Report of the Study Team on Centre State Relations, New Delhi, ARC, September 1967, pp. 301-5

70. Report of the Centre-State Relationships, New Delhi, ARC, 1969, pp. 32-5.

71. SETALVAD, op. cit , p. 98.

after 1971, the Congress Party has once again emerged as the dominant party at the Centre and the State. This has enabled the party machinery to devise various extra constitutional methods of discussion and consultation with a view to ironing out differences of opinion between the Union and the States and between the States themselves.

It is to be further noticed that under article 263 the functions of the council are purely advisory in nature and have not the effect of an adjudication binding on either the States or the Union.

ARTICLE 262

One of the essentials of cooperative federalism upon which the basic framework of the constitution of India is modelled is to explore suitable ways of resolving disputes between the States. The extra-judicial body to adjudicate the disputes between the Centre and the States has been contemplated under article 262 of the constitution.

Article 262 empowers the Union Parliament to provide by law for the adjudication of any disputes relating to waters of inter state rivers or river-valleys, and the Parliament may by law exclude such disputes from the purview of the Supreme Court or any court of law.

Pursuant to the power conferred by the Article, Parliament has enacted the Inter-State Water Dispute Act, 1956. The Act sets out broadly the various steps in the

adjudication of disputes relating to waters of inter-state rivers and river valleys. It provides for a request by a State Government to the Central Government for reference of a water dispute arising with another State Government to a tribunal for adjudication⁷². The tribunal is to be composed of a Chairman and two other members nominated by the Chief Justice of India from among persons, who at the time of such nomination, are Judges of the Supreme Court or a High Court⁷³.

It is to be noticed that it is only when the Central Government is of the opinion that the Water dispute cannot be settled by negotiation that the Central Government is required to constitute a tribunal to decide the dispute and make a reference to it. Thus, the constitution of a tribunal to settle water disputes rests on the discretion of the Central Government.

Recently the Central Government was able to settle the Godavari water dispute and Cauvery water dispute with the help of negotiations with the concerned States. Under the accord reached on Cauvery, a committee of representatives of the three States (viz Tamil Nadu, Karnataka and Kerala) and the Central Government was constituted to work out the manner of sharing the available waters in less years⁷⁴. The

72. Inter State Water Disputes Act, 1956, Section 3.

73. ibid, Section 4(2)

74. The Hindustan Times (New Delhi), August 28, 1976

three States further agreed to constitute a Cauvery Valley Authority⁷⁵.

The above survey of the informal and formal coordinating mechanisms operating in Indian federation reveals that with the help of these mechanisms the Central Govt. can exercise its influence to a substantial extent in promoting regional coordination. The dominance of single political party at the Centre and the State has further facilitated the task of promoting coordination among the States in the last few years.

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75. ibid

CHAPTER - IVFINANCIAL CENTRALIZATION

✓ "The mechanical and spiritual forces of modern times and the emergence of the phenomenon of the large scale have led to functional centralization, integration of economic power and unification of finance in the hands of the centre"¹. Due to financial pressure the federal government has exploited more intensely the fiscal powers assigned to it. Not only that, with the inception of economic planning the Central Government has tended to assume a considerable degree of control over the States' finances and directs the State Governments about the manner in which the grants and other funds are to be used.

In Indian Federation the Federal Government is a dominant partner in its relations with the units of Federation in financial matters. According to V.K.R.V. Rao, "with regard to the distribution of functions between the Centre and the States, India would conform to a classical example of federal government. But when it comes to financial relations between the Centre and the States, this is far from being a federal government"².

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1. SAHAY (A.J.) and SINGHA (S.N.), "Finance Commissions and Grants-in-Aid of Revenues of States in India" in Journal of Constitutional & Parliamentary Studies, vol. VIII, No.1, 1974, p. 464.
 2. RAO(V.K.R.V.): Extract from "Symposium on Federal Financial Relations In India with Special Reference to the Role of the Finance Commission" in Journal of Constitutional and Parliamentary Studies, op.cit. p. 537.

The dominant position of the Central Government in the sphere of finance is mainly responsible for its ever increasing control and influence over the finances of the State Governments in Indian Federation. Though, the trend towards financial centralization had already started emerging with the inception of economic planning in India, nevertheless, its intensity and magnitude rose vigorously after the third Five Year Plan period. This has been due to the evergrowing importance of the Planning Commission over the Finance Commission. To what extent this tendency towards financial centralization has increased after the Third Five Year Plan is the main concern of the present chapter. The main issues to be analysed in this context are firstly, the financial position of the Centre vis-a-vis the States and secondly, the impact of Planning on the Centre State financial relations.

The financial relations existing between the Centre and the States in the Indian Union today are the result of a slow and gradual development, from a simple unitary system to a complex federal structure. The financial relations between the Central Government and the Provincial Governments during the British rule in India were always determined by political and constitutional considerations. During the British rule, the structure of Indian finance as in Government and administration, was essentially

unitary in character. "The Government of India exercised complete control over the revenues and expenditures of provincial Governments since the time of their conquest"³. The constitution of India which was brought into operation on 26th January, 1950 did not alter the mode of inter-Governmental fiscal relationships radically. The heritage of the past was not altogether abandoned.

Thus, the financial relations between the Union and the States follow closely the pattern contained in the Government of India Act, 1935. The subordination of the Provinces to the Centre and of the Centre to the British Parliament was the key stone of the Government of India Act, 1935. "Though the Provinces were progressively given larger fiscal authority, they continued to be dependent on Central assignments and assistance for viability. This limited the full play of the political autonomy granted"⁴. Thus the unitary traditions of the British administration have left a permanent impression on India Inter Governmental Fiscal Relations, nonetheless, the constitution profoundly affected the tenor of the Indian federal finance.

3. RAO (M.R.), Union State Financial Relations in India, Dharwar, Karnatak University, 1972, p.13.

4. CHANDA (ASOE), Federalism in India, London, George Allen & Unwin Ltd., 1965, p. 180

The basic approach towards centre-state fiscal relations in India is governed by the constitutional provisions and the recommendations of the Finance Commissions within the overall framework set up by the Planning Commission. Thus, it would be desirable to examine first, the constitutional position with regard to Union-State financial relations in India.

The Constitutional Position:

The scheme of division of resources in the Indian Union makes a clear bifurcation of taxes to be levied by the Union and the States Governments. A comprehensive enumeration of taxes has been made and each is under the legislative jurisdiction of either layer of government; the residuary powers rest in the Union Government. In general, taxes that have an inter-state base are under the legislative jurisdiction of the Union, while those that have a local base fall under the legislative jurisdiction of the States.

The taxes over which the Union has legislative jurisdiction can be classified under a four fold division:-

- (a) Taxes which are to be levied and collected by the Union and the entire proceeds therefrom are to be retained by it. These are the corporation tax, customs (including export duties), taxes on individual and companies and surcharge on taxes on income (other than agricultural income) and on taxes levied and

collected by the Union but whose revenue is assigned wholly to the States;

- (b) Taxes which are to be levied by the Union but are to be collected and retained by the States. These are stamp duties mentioned in the Union list and duties of excise on medicinal and toilet preparations; Excise duties on alcoholic liquors, opium and other drugs are assigned to the States;⁵
- (c) Taxes which are to be levied and collected by the Union but the proceeds are shared with the States. These are taxes on income (other than agricultural income) and excise duties except those assigned to the States;⁶
- (d) Taxes which are to be levied and collected by the Union but the entire proceeds are assigned to the States⁷. Some of these taxes are succession and estate duties on property (other than agricultural land), terminal taxes on goods & passengers carried by railway, sea or air, taxes on railway fares and freights;
- (e) Union excise duties can be shared with the States if Parliament so decides⁸.

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5. Article 268.
 6. Article 270.
 7. Article 269. ✓
 8. Article 272.

The states have legislative jurisdiction and power of collection over land revenue, taxes on agricultural income, taxes on lands and buildings; taxes on mineral rights; succession and estate duty in respect of agricultural land; excise on alcoholic liquors and narcotics; taxes on profession, trades and employment; and taxes on advertisements other than published in newspapers, stamp duties and registration fees are also assigned exclusively to the States. There is a provision under Article 277 that a tax levied by a State Government or a local authority, immediately before the commencement of the constitution and assigned to the legislative jurisdiction of the Union, shall continue to be so levied until Parliament by law otherwise provides.

The scheme of division of resources adopted in the Indian constitution follows broadly the financial provisions of the Government of India Act, 1935. There are, however, some important changes. Export duties now belong exclusively to the Centre, though under the 1935 Act a share of the duty on jute was assigned to the jute producing Provinces. The Constitution also imposes restrictions which did not exist before, on the powers of the States with regard to the levy of taxes on the sale or purchase of goods⁹. Further

9. BHARGAVA (R.S.), The Theory and Working of Union Finance in India, Allahabad, Chaitanya Publishing House, 1974, p. 104.

the constitution assigns to the Union the legislative jurisdiction over taxes on the sale or purchase of newspapers and on advertisements published there in.

The constitutional provisions pertaining to the scheme of division of resources between the Centre and the States clearly reflect a type of disequilibrium which arises from the fact that the constitution has assigned relatively elastic and productive sources of revenue to the Centre whereas the States, who have to discharge the social and developmental functions - the demand for which is of an ever expanding nature - have been provided with less elastic and less lucrative sources of revenue. The Central taxes are not only more lucrative but also grow with the growth in national economy whereas the taxes allotted to the States do not reflect this tendency.

Besides this, "the Centre has foreign aid and deficit financing at its disposal. All this enables it to command large resources while the states are not in such a position. There is thus an inevitable element of inadequacy in the financial resources of the States"¹⁰.

It is true that the duties and taxes, which, though levied by the Union, are to be collected by the States and assigned to them have been placed in the Union list for

10. VENKATARAMAIA (M.) and SHIVIAH (M.), Indian Federalism, Arnold-Heinemann, New Delhi, 1975, pp. 109-110.

enforcing a uniform rate of taxation. "However, the fact remains that the power to levy is vested in the Union, so that the proceeds of these taxes would be available to the States only if the Union decides to make a levy. The rate at which they should be levied would also be a matter for the decision of the Union. Thus, in regard to this source of revenue, the States are to some extent dependent on the Union"¹¹. It is seen that, out of a large number of taxes which are enumerated in Article 269, only two taxes are being levied by the Union, viz, Estate Duty in respect of property other than agricultural land and taxes on the sale of goods in the course of inter-state trade. "The States which are chronically in need of more resources have thus been deprived of potential sources of revenue by the omission of the Union to levy taxation under these heads"¹². Further, the exercise by the Union Government of the power to levy surcharges has also made the latter to exercise its control on the States. The Union Government has levied large surcharges on taxes on income for a series of years, which have, in substance, become permanent levies of tax.

11. SETALVAD (N.C.), Union and State Relations under the Indian Constitution, Calcutta, Eastern Law House, 1974, pp. 108-09.

12. ibid , pp 109-110.

Thus, the financial provisions of the constitution have made the Centre much stronger than the States in respect of financial resources. This becomes clear by the following table which shows the total tax revenue of the Centre and the tax revenues raised by the States during the last ten years.

Table I shows that the total tax revenue collected by the Union Government increased from Rs. 2061 crores in 1965-66 to Rs. 2823 crores in 1969-70, whereas the State Governments' own tax revenue increased from Rs. 842 crores to Rs. 1356 crores during the same period. This shows that the revenue of the Central Government continued to increase at a rapid pace in comparison to the revenue of the State Governments during this period. This is borne by the fact that the percentage variation of the states' tax revenue to the tax revenue of the Central Government was as high as 145 and 146 during 1965-66 and 1966-67 respectively. After 1969-70, a noticeable increase took place in the tax revenue of the Central Government while the tax revenue of the State Government increased gradually. This is borne by the fact that between 1969-70 to 1972-73 and 1972-73 to 1975-76 the Central taxes increased by 60 percent and 66 percent respectively while the taxes of the State Governments increased by just 38 percent and 61 percent during the same period. The percentage variation of the tax revenue of the States to that

TABLE-I: Total Tax Revenue of the Central Government and the States' own Tax Revenue (1965-1976)

(Rupees in Crores)						
YEAR	Total Tax Revenue of the Cent. Govt?	States' own Tax Revenue	Total trans-ferred to the States**	Page of col. 4 to col. 2.	Page of col. 4 to col. 3	Variation of col. 3 to col. 2
1	2	3	4	5	6	7
1965-66	2061	842	276	13	33	145
1966-67	2306	938	373	16	40	146
1967-68	2353	1065	416	18	39	121
1968-69	2510	1221	491	20	40	105
1969-70	2823	1356	622	22	46	108
1970-71	3207	1528	756	24	49	110
1971-72	3872	1695	944	24	56	128
1972-73	4510	1873	1120	25	59	141
1973-74	5073	2305	1163	23	50	120
1974-75	6322	2742	1224	19	45	130
1975-76	7470 (RE)	3001 (RE)	1599 (RE)	21	53	149

Sources:- Explanatory Memorandum, General Budget, 1968-69, 1973-74, 1976-77.

Note: 1. Figures have been rounded off for convenience in calculation.

* Includes Taxes on income and expenditure, taxes on property and transactions, taxes on commodities.

** Includes Income tax, Estate Duty and Union Excise Duty.

of the Central Government was 130 in 1974-75 which has risen to 149 in 1975-76. This shows that the sources of revenue assigned to the States are relatively less elastic than that of the Central Government.

Apart from this, it is also clear from the above table (Table-I) that the amount of shared taxes transferred to the States has continued to increase constantly since 1965. The amount of tax revenue transferred to the States was 13 percent of the total tax revenue of the Central Government during 1965-66. This percentage kept on increasing in the subsequent years and during 1972-73 it increased to 25. Though this percentage has declined in 1973-74 and 1974-75 but in 1975-76 it is again showing a rising trend. This shows the increasing dependence of the States on the Centre for the transference of large amount of tax revenue. This tendency has become more perceptible after the third Plan period.

Thus, the revenues of the Central Government have continued to maintain a buoyant trend in contrast to the revenues of the State Governments. One of the most productive and progressive sources of revenue of the Central Government is the Corporation tax. As a result of increased industrial activity Corporation tax has shown a remarkable growth.

When in 1959, income tax paid by the companies was excluded from sharing it caused a serious shrinkage in the

divisible pool. "This measure not only eroded the divisible pool of income tax to be allocated to the States but deprived the States of a source of income which has a built in buoyancy"¹³. All the States felt the pinch and represented to the third Finance Commission that it had "deprived them of an expanding source of revenue to which they had a constitutional entitlement"¹⁴.

Corporation tax has registered an impressive growth and has become one of the mainstays of Centre's resources. The rates of this tax have been progressively stepped up. Re-classification of income tax has made an appreciable contribution to this tax by a corresponding reduction in the proceeds of income tax. Thus, reclassification of income-tax has also transferred income-tax on companies to corporation tax adding to the revenues of the Centre eroding the divisible pool. The following Table-II shows comparative growth of Corporation Tax and Income Tax.

Table-II shows that the Income tax revenue of the Central Government during 1965-66 was Rs. 272 crores while the revenue yield from the corporation tax was much higher which was Rs. 305 crores. In the following year also the yield from corporation tax continued to remain more. After

13. SARMA (S.C.), "Finance Commission and Injustice to States", in Modern Review, vol. No. CXXIV, No.1, January 1974, p. 53.

14. Fifth Finance Commission's Report, 1969, p.16.

TABLE-II: Comparative Growth of Income Tax Revenue and Corporation Tax revenue in Central Budget (1965-1976)

(Rupees in Crores)					
YEAR	Income Tax.	Corporation Tax	Total of col.2 and col.3	States' share transferred	As % age of col.4
1	2	3	4	5	6
1965-66	271.90	304.84	575.74	123.3	21.4
1966-67	306.63	330.80	637.43	137.1	21.5
1967-68	325.90	310.57	636.47	174.5	27.4
1968-69	378.50	299.80	678.30	194.5	28.6
1969-70	448.40	353.40	801.80	293.1	36.6
1970-71	473.20	370.52	843.72	359.1	42.6
1971-72	536.74	472.10	1008.84	462.2	45.8
1972-73	629.93	557.86	1187.79	492.3	41.4
1973-74	745.16	582.60	1327.76	531.6	40.1
1974-75	874.41	709.48	1583.89	512.3	32.3
1975-76	1060.00 (RE)	954.00 (RE)	2014.00	734.1 (RE)	36.5

Sources: Explanatory Memorandum, General Budget for the year, 1968-69, 1973-74 and 1976-77, Government of India, Ministry of Finance.

1966-67, though the yield from income tax remained slightly higher than from the corporation tax, nevertheless, it is to be kept in mind that while income tax is shared with the States, the yield from corporation tax remains exclusively with the Centre. It is also clear from the above table - II that the share of the States as percentage of the total amount yielded by both the taxes did not increase remarkably. Between 1973-74 and 1975-76 corporation tax revenue grew by 64 percent while income tax revenue increased by 42 percent. This shows the relative elasticity of corporation tax, which is an exclusive reserve of the Central Government to income tax which forms a part of the divisible pool.

Though, the States are continuing to share in a far more buoyant source of central revenues, namely excise duties, "the fact remains that the constitution envisaged participation by the States in sharing of a part of what the companies were obliged to pay by way of tax on their profits and that they have been deprived of this latter source by a mere stroke of the Centre's pen"¹⁵. Exclusion of tax on the incomes of the companies has greatly dwindled the divisible pool though income tax proceeds and share have increased. The loss on account of company tax's exclusion from the divisible pool remained irrecoverable.

15. "Centre-State Financial Relations V-A Proposed Scheme of Resource Transfer", in Economic and Political Weekly, 22nd September, 1973, p. 1730.

The following table shows the loss to the States on account of exclusion of Corporation tax from the divisible pool:

TABLE-III

Loss to States on account of Reclassification of Companies Income Tax as Corporation Tax. (Rs. in Crores)

Period	Corporation Tax proceeds	Company tax proceeds (a)	States' share	Yearly average
1962-63 to 1965-66	1125.84	551.66	367.35 (b)	91.8
1966-67 to 1968-69.	941.17	461.09	345.75 (c)	115.2
1969-70 to 1973-74	2336.48	1144.64	858.48 (c)	171.7

Note: (a) at 49 percent of the corporation tax proceeds.

(b) at 66.67 percent of the company tax proceeds (as applied to income tax).

(c) at 75 percent of the company tax proceeds (as applied to income tax).

(Figures worked out after applying the above mentioned criteria).

As per the above estimation annual loss to the States works out to be Rs. 91.8 crores for the third Finance Commission Period and Rs. 115.2 crores for the fourth Finance Commission period and in the fifth Finance Commission period the loss comes to Rs. 171.7 crores which is quite significant in its magnitude. Therefore, the loss to States from the exclusion of corporation tax continues to be a serious drag on the resources of the States.

Therefore, "it is universally felt that inclusion of corporation tax, even a part of it, in the divisible pool, will have healthy influence on the State finances. Otherwise strains of development of corporate sector will have to be absorbed by the States while the Union reaps the benefits"¹⁶.

Thus, the rapid growth of corporation tax has made the Central Government financially strong. This has helped in accentuating financial imbalance, a noticeable trend in the realm of Union-State financial relations in Indian federation. As the fifth Finance Commission put it, "The imbalance between the functional responsibilities assigned to the States and the financial resources allocated to them, which is a general feature of many full fledged federations, also exists in India"¹⁷. While the resources of the States have not maintained a steady growth rate, their administrative expenses have increased manifold, "arising out of the obligations of a welfare state, the incidence of committed expenditure on completed plan projects"¹⁸. In consequence, the States have tended to become more and more dependent on the Centre for financial subventions.

16. NANJUNDAPPA (D.M.), Inter Governmental Financial Relations in India, New Delhi, Sterling Publishers, 1974, p. 22.

17. Report of the Finance Commission, 1969, p. 18, Para 2.1.

18. CHANDA (A.K.), "Federal Finance in India in 'ed-A.G.Hoorani, Centre State Relations in India (Leslie Sawhny Programme of Training for Democracy), Bombay, Orient House, 1972, p. 108.

In contrast, the central revenues continue to maintain a buoyant trend. As a result of increased industrial activity corporation tax has shown a remarkable growth. Impressive gains have been made by the central Government in the yield of excise duties. The duty which was imposed on very few commodities at one time has now been generalised and makes the single largest contribution to the central fisc.

Table-IV projects the budgetary position of the Centre and the States on revenue account. Now it is to be seen to what extent imbalance exists between the income and expenditure of the States on this account.

Table-IV shows the growth in income and expenditure of the Central and the State Governments on revenue account. The income of the Central Government on revenue account was Rs. 8964 crores while expenditure was just Rs. 7950 crores. This shows that the Central Government had Rs. 1014 crores as surplus amount during the third Plan period. On the other hand there was not much difference between the income and expenditure of the State Governments. The surplus amount of the States during the said period was just Rs. 63 crores which was just 6.2 percent of what the Central Government had got as a surplus amount during the third Plan period.

During the fourth Plan period, the Central Government's income on revenue account increased by 82 percent while

**TABLE-IV: Budgetary Position of the Centre and the States on Revenue Account
(1965-1975)**
(Rupees in Crores)

Year	CENTRAL GOVERNMENT			STATE GOV. DEPTS		
	Income	Expenditure	(+) Surplus (-) Deficit	Income	Expenditure	(+) Surplus (-) Deficit
1	2	3	4	5	6	7
1965-66	2344	2025	+ 319	1850	1892	- 42
Total III Plan	8964	7950	+1014	7334	7271	+ 63
1966-67	2500	2272	+ 228	2135	2194	- 59
1967-68	2586	2481	+ 105	2324	2334	- 10
1968-69	2793	2712	+ 81	2817	2794	+ 23
From 1966-69	7879	7465	+ 414	7276	7322	- 46
1969-70	3067	2942	+ 125	3035	3102	- 67
1970-71	3342	3179	+ 163	3371	3390	- 19
1971-72	4028	4128	- 100	4045	4038	+ 7
1972-73	4578	4593	- 15	4917	4982	- 70
1973-74	5073	4836	+ 237	5552	5669	-117
Total IV Plan	20088	19678	+410	20915	21181	-226
1974-75	6558	5790	+ 768	6271 (RE)	6035 (RE)	+ 236

Source:- Reserve Bank of India Reports on Currency and Finance from 1965-66 to 1974-75.

expenditure increased by 78 percent. Whereas, during the same period the States had to face sharp increase in their expenditure. While their income increased by 97 percent, expenditure increased by 103 percent which was remarkable in its magnitude. Thus, the expenditure incurred by the States was much more than their income during the period 1966 to 1969 and during the fourth Plan period. The States had to face a deficit of Rs. 46 crores during 1966 to 1969 which increased to Rs. 266 crores during the fourth Plan period. On the other hand the Central Government's income have continued to surpass its expenditure. This is borne out by the fact that the Centre had Rs. 414 crores and Rs. 410 crores as surplus amount during 1966 to 1969 and 1969 to 1974 respectively. Even during the year 1974-75 the surplus amount of the Central Government on revenue account is much more than that of the States. Thus, the income of the Central Government on revenue account have shown great buoyancy while the income of the States have not tallied with their needs. It is because, "while needs are governed by functions which are divided on the basis of the principles of efficiency, administrative convenience and economy, 'resources' are distributed according to the principles of efficiency, stability and adequacy"¹⁹.

19. SAHAY (A.J.) and GHOSH (S.N.), art.cit., p. 464

Thus, we see that the imbalance between the income and expenditure of the States on revenue account increased with much rapid pace after 1968. This has resulted in increased dependence of the States on the Centre for transference of more funds, which has helped the latter to enhance its financial control on the former.

The Indian constitution can be said to take due note of the imbalance involved in its scheme of things. Therefore it provides for the necessary transfer of resources from the Union to the States. The broad scheme of financial transfers from the Union to the States has been laid down in the constitution under Article 268, 269, 270, 271 and 272. Further, Article 275 recognizes the necessity for grants-in-aid of revenues of States which may be in need of assistance. Article 282 provides for grants by the Union to the States for any public purpose.

Thus, the resources are transferred from the Government of India to the State Governments by devolution of certain tax proceeds, by grants and by loans. By devolution of tax proceeds, the States get about one third of the resource transfer. The total financial needs of the States are determined by their plan size and their non-plan size budgetary requirements. The gap between their needs and their revenues from devolution of tax proceeds and own tax efforts is to be met by grants from the Union Government and from loans from the Union Government.

So far as transfer by devolution of tax proceeds is concerned, the percentage of Union tax revenues to be transferred to the States and the principles on basis of which distribution has to be made among the States have not been laid down in the constitution. Both of these matters are left to be decided periodically on the advice of a quasi-judicial body called the Finance Commission to be appointed every five years or earlier, if considered necessary (Article 280).

As for transfers in the form of grants again, neither for grants-in-aid of revenues to States "in need of assistance" (Article 275) nor for Public purpose grants (Article 282) is the amount laid down by the Constitution. While Article 275 grants-in-aid are to be fixed on the advice of the Finance Commission, Article 282 grants are left entirely to the discretion of the Union Government.

There has been a progressive increase in the volume of financial transfers from the Centre to the States by way of obligatory and permissive sharing of the proceeds of certain Union taxes and duties and grants-in-aid under Article 275 in the past few years. Apart from the resources made available to the States by the Union on the basis of the recommendations of the Finance Commission, large grants have been made available to the States by the Union under Article 282 of the Constitution, and very large amounts have been advanced as loans to the States by the

Union, acting under Article 293(2) of the Constitution. These have been mainly made for carrying out the development programmes laid down from time to time by the Five Year Plans. However, neither the grants nor loans are restricted to development expenditure, and some of them have been given to the States for non-plan expenditure also. In making these grants and loans, the Union Government acts on the recommendations of non-constitutional body - the Planning Commission.

Table-V shows the magnitude of amount transferred from the Centre to the States. This table shows that the total amount transferred to the States at the end of the III Plan formed nearly 48 percent of the total expenditure incurred by the States on both revenue and capital accounts. This amount was nearly double than the total amount transferred during the Second Plan period which was Rs. 2833 crores. Out of this transfer during the III Plan period shared taxes and grants formed 34 percent of the expenditure of the States on revenue account while the proportion of loans formed 70 percent of the expenditure of the States on Capital Account. The total transfer in the form of shared taxes, duties and loans formed 48 percent of the total expenditure of the States. This shows that nearly half of the total expenditure of the States was financed by the Centre during the III Plan. This is a pointer to

TABLE-V: Resources transferred from the Centre to the States (1965-1976)

(Rupees in Crores)

YEAR	Resources made available by the Centre				Expenditure of States			Percentage		
	Shared Taxes	Grants *	Loans	Total	Revenue Account	Capital Account	Total	(2+3) to 6	(4) to (7)	(5) to (8)
1	2	3	4	5	6	7	8	9	10	11
1965-66	276	348	821	1445	1892	1075	2967	33	76	49
Total III Plan 196	1196	1303	3101	5600	7272	4440	11712	34	70	48
1966-67	373	449	935	1757	2194	1146	3340	38	82	53
1967-68	416	529	908	1853	2334	1393	3727	40	65	50
1968-69	491	558	920	1969	2794	1628	4422	38	57	45
1966-69	1280	1536	2763	5579	7322	4167	11489	39	67	49
1969-70	622	532	1030	2184	3102	1728	4830	37	60	45
1970-71	756	566	1005	2327	3390	1822	5212	39	55	45
1971-72	944	720	1192	2864	4033	2124	6162	41	56	46
1972-73	1120	700	1925	3745	4982	2391	7373	38	81	52
1973-74	1163	937	1553	3653	5669	2592	8261	37	60	44
Total IV Plan 4605	3543	6205	14853	21181	10657	31838	30	63	47	
1974-75	1224	1016(RB)	1174(RB)	3414	6035(RB)	2518(RB)	8553	37	47	40
1975-76	1324(BE)	1079(BE)	1143(BE)	3546	6683(BE)	2554(BE)	9237	36	45	38

Sources:- Reserve Bank of India Report on Currency and Finance, for the years 1961-62, 1962-63, 1966-67, 1967-68, 1968-69, 1969-70, 1970-71, 1971-72, 1972-73, 1973-74, 1974-75.

* Grants include statutory grants under Article 275 and discretionary grants under Article 282.

the fact of excessive dependence of the States on the Centre in meeting their expenditure. The period 1966 to 1969 witnessed further increase in the amount being transferred to the States from the Centre. The yearly average amount transferred during 1966-69 was much more than the average amount of the previous years. The total transfer formed 49 percent of the total expenditure of the States. There was a conspicuously sharp increase in the amount being transferred to the States during the IV Plan period, i.e. from 1969-74. The total amount transferred during the said period stood at Rs. 14,853 crores which was nearly 167 percent more than the amount transferred during 1966-69. Out of the amount transferred during the Fourth Plan period, shared taxes and grants formed 39 percent and loans 63 percent of the revenue account and Capital account of the States respectively. Although, the percentage of the amount transferred to the total expenditure of the States slightly declined in the Fourth Plan period due to rapidly increasing expenditure of the States, however, the amount transferred to the States continued to increase year after year. This is borne by the fact that yearly average amount transferred during Second Plan period was Rs. 566.6 crores. It rose to Rs. 1120 crores in the Third Plan period. During 1966-69 the yearly average amount increased to Rs. 1859.6 crores. During

the Fourth Plan period the yearly average amount transferred to the States increased sharply. It stood at Rs. 2970.6 crores. This shows tremendous increase in the amount transferred to the States after 1968.

This clearly reflects the great extent to which the States remain dependent on the Centre for financial subventions. As a result of it the Central Government gets ample opportunity to exercise its financial control on the States. Thus, the excessive financial dependence of the States on the Centre helps in fostering the tendency towards centralization in the sphere of finance.

SECTION - II

Impact of Planning on the Union State Financial Relations in India

Planning has had a significant role in influencing the Union-State financial relations in India. The increasing tendency towards financial centralization in Indian federation can be attributed to the advent of economic planning. Therefore in this section of the chapter an attempt has been made to analyse the role of Planning in fostering the tendency towards financial centralization.

"Acceptance of a planned process of development has introduced a new dimension to centre State financial relations - a dimension which was not conceived of at the time of constitution making"²⁰. Planning has introduced a

20. KHATEHATE (E.R.), and BHATT (V.V.), "Centre State Financial Relations, In Context of Planned Development", in Economic and Political Weekly, Feb. 21, 1970, p.371.

powerful centralistic direction in Centre-State relations. The experience of the working of Indian federalism during the past few years reveals that the States have become more dependent on the Centre through the development of extra-constitutional devices. The emergence of the Planning Commission and the spread of its tentacles over the entire field of government has been the one dominant phenomenon that has given the Indian federalism further centralistic turn. "The operation of five year plans has made the country's federal system function in almost a unitary way"²¹. Now it is to be seen, to what extent Planning has exerted its influence on the Union-State financial relation. In this regard, main focus would be on analysing the position of Finance Commission vis-a-vis Planning Commission.

The procedures and practices relating to Government Finances and Centre-States financial relations have evolved in the light of the constitutional provisions, the legacy of the British practices before Independence and the compulsions of the planned process of economic and social development. The provisions of the constitution did not reflect the requirements of a centrally initiated process of planned development, since the process of constitution making

21. RAY (ANAL), Inter Governmental Relations In India, Bombay, Asia Publishing House 1966, p. 114.

was completed before the era of Planning began. As a result, the procedures and practices required by the Planning process have been more or less super imposed on the inherited as well as the constitutional procedures and practices²². The constitution left social and economic planning in the concurrent list and did not provide for effective control over this process by the Central Government. As a consequence to this, several administrative practices and institutions have emerged.

Created by a resolution of Government, primarily to perform the functions of a Staff Agency to the Govt. of India, the Planning Commission developed, through its organizational and functional ramifications, as also through personality associations, into an imperium in imperio²³. The absence of a definition of the relations of the Planning Commission to the Government and the association of ministers with the work of the commission led to a situation where the activities of the Commission became indistinguishable from those of the Government²⁴. Because of the intrusion of the factor of political influence, the Planning Commission appears to have assumed the role of a super cabinet in India²⁵.

22. KHATKHATE (I.T.) and BHATT (V.V.), art. cit. p. 370

23. CHANDRA (ASOR), Federalism In India, op.cit. p. 271.

24. ibid, p. 294

25. GADGIL (I.S.), Planning and Economic Policy In India, Poona, Gokhale Institute of Politics & Economics, 1965, p. 170.

The role of the Planning Commission can be examined in the light of the fact that the composition of the Commission is such that the formulation of a five year plan or of an annual plan is done largely in the light of the accepted policies and decisions of the Central Government. As W. Malenbaum observes, "The power of the Centre is so great that at the Planning stage agreement will be reached reasonably close to the Centre's position"²⁶. Secondly, the role of the Finance Commission as an umpire in Union-State financial relations has been rendered ineffective by the operation of the Five Year Plans.

While the Finance Commission has its base in a constitutional provision (Article 280), the Planning Commission came to be established in 1950 by a resolution of the Government of India. The strength of the Planning Commission and the qualifications of its members have not been prescribed. The Union Government retains complete freedom to vary its strength and to appoint such members to it as it chooses.

Moreover, there is no time limit fixed for the duration of the commission. When it was originally constituted it was perhaps meant to be a temporary body. The

26. MALENBAUM (W.), "Who does the Planning" in (ed.). Park and Tinker, Leadership and Political Institutions in India, New Jersey, Princeton University Press, 1959, p. 305.

composition of the commission is largely official. It has, as its Chairman, the Prime Minister and some cabinet Ministers (who constitute nearly half of the total strength of the members of the Commission) and the other members have always been the nominees of the Central Government. Contrasting its constitution with that of the Finance Commission which generally consists of members independent of the Government, the Planning Commission may be described as a quasi-political body.

In the post Independence era, the role of the Centre in the formulation and execution of the Five Year Plans became paramount. The Planning Commission which has been entrusted with the work of formulating the Plans and seeing to their proper execution is a body which is completely under the control of the centre.

Before a Five Year Plan is given its shape each state is asked to prepare its own plan in the light of the targets and priorities laid down by the Planning Commission. "No State Plan comes into operation unless it is scrutinized and approved by the Commission"²⁷. It is true that frequent discussions between the Commission and the concerned State representatives take place, before a State Plan is finalised by the former. But in the end it is the views of the Commission that prevail²⁸.

27. VEKKATANGAIYA (L.) and SHIVIM (M), op.cit., p. 108.

28. RAY (AZAL), op.cit. p. 38.

Thus, the line on which a state should develop its economy is determined for it by the Centre through the Planning Commission. This is brought out clearly by the fact that there is a large amount of disparity between the Plan outlays as proposed by the States and those approved by the Commission. For example in the fourth five year plan the States proposed an outlay of Rs. 8,708.69 crores and that approved by the Commission came to only Rs. 6360 crores.

The scrutiny of the State Plans by the Planning Commission is not only limited to finding out whether they are generally in conformity with the targets and priorities it lays down but it also extends to minute details in State Plans to individual schemes laid down by State Governments to satisfy local requirements and needs. The Planning Commission also supervises the work of plan-implementation, particularly in the States through Advisers (Programme Administration), each of them being assigned a group of States. Even though State plans deal with subjects in the State exclusive list nevertheless, they require the approval of the Planning Commission before they can be put into operation and this approval is needed even in respect of individual schemes. This is a pointer to the fact that through the device of Planning, Centre exercises considerable amount of control on the States in finalising their plans and development schemes.

It is true that in shaping the State Plans at different stages and giving them a final form the National Development Council on which the Chief Ministers of all States are represented is consulted and its approval taken. But in practice the role of the Council has all along been a formal one. It has neither the time, nor the expert knowledge needed to scrutinize the Plan as drafted by the Planning Commission²⁹. Comments have been made on the defective procedures, which are at present in vogue for placing the necessary information before the N.D.C. It is contended that the Council has no fixed secretariat of its own. The Plan schemes are sent to the Members of the Council a short time before it meets, and no time is left for the members to give them due consideration³⁰. Thus, "a review of the work of the council would show that it is by and large "a vital machinery for getting the policy decisions of the Union Cabinet," adopted generally on the suggestions of the Planning Commission, "accepted by the States. The Council at its periodical meetings takes a number of important decisions which are virtually the decisions of the Union"³¹.

The impact of Planning on the Union-State financial relations can be seen in assessing the position of Finance

29. Report of the Study Team on Centre-State Relations, (Administrative Reforms Commission), Vol.I, 1968, pp.102-4.

30. SETALVAD (M.C.), op. cit., p. 130.

31. RAY (AMAL), op. cit., pp. 118-19.

Commission vis-a-vis Planning Commission.

One of the most novel and important financial provisions in the Indian Constitution is the establishment of a Finance Commission. The role of the Finance Commission is governed by the basic principle of federal finance, which seeks to meet the residuary budgetary needs of the States, after taking into account the devolution of the central taxes to the states. "Planning changed the entire economic, political and fiscal context in the country. The criterion of budgetary needs, implicit in the Finance Commission's recommendations, was eroded by the impact of Plan expenditure, growing as it did in the last few years"³².

National economic planning in India has resulted in considerable centralization of resources. The Planning Commission has emerged as an important agency for central transfers (mainly for developmental purpose) along with the Finance Commission. The Planning Commission estimates resources that may be available for financing State Plans (as well as central Plan) for the purpose of formulating the Plan. Such an exercise, by its very nature, encompasses the entire area of the State Government's financial transactions. Therefore, it is difficult to demarcate an area of devolution under the exclusive jurisdiction of the Finance Commission. "There is an overlap of functions and both the

32. BHASKAR and BHATT, art. cit. p. 369.

Planning Commission and Finance Commission carry out independent resource exercises for estimating each States' position on non-plan account"³³.

The Planning Commission independently estimates the balance from current revenues, the magnitude of which differs from the Finance Commission's estimate of the non-plan revenue position. "But in the resource exercise which forms the basis for determination of the Plan size, presumably the planning Commission's estimates finally prevail"³⁴.

The fourth Finance Commission clearly emphasised that there was no legal bar under the Constitution to prevent the Finance Commission from taking into "consideration both Capital and revenue requirements of the States (...) in recommending grants under Article 275 of the Constitution. But the setting up of the Planning Commission (----) has resulted in the curtailment of the functions of the Finance Commission"³⁵.

4 In the matter of evolving rational criteria for its scheme of devolution, the Finance Commission, vis-a-vis the

33. JHAVERI (H.J.), "The Sixth Finance Commission - An Evaluation of its Recommendations" in Economic and Political Weekly, vol.IX, No.5, Feb.2,1974, p. 137.

34. ibid., p. 137

35. A.R.C. Report on Centre State Relationships, Government of India, New Delhi, June 1969, p. 16.

the Planning Commission, is in a disadvantageous position on two accounts. " One of these is a pervasive scope of the Planning Commission in contrast to the restricted perview of the Finance Commission. Secondly, the Planning Commission, in devising its scheme of resource transfer and of resource allocation in general; has the benefit of agreed Plan priorities which, in turn, are presumably determined in accordance with the overall objectives of Planning"³⁶. Thus, a rational and well defined basis already exists for the Planning Commission's devolution. But in the case of the Finance Commission, the terms of reference, which may be expected to lay down certain specific criteria, all couched in very broad terms render formulation of operational criteria rather difficult.

Although constitutional position appears to be that the Finance Commission enjoys the greatest amount of freedom in the matter of both grants-in-aid as well as tax transfer from the Union to the State Governments. "But in actual practice, it is seen that by laying down certain specific guidelines in the terms of reference, the Union Government has all along sought to give a certain direction to the thinking of the successive Finance Commissions on the

36. JHAVERI (N.J.), art. cit. p. 137

subject of grants-in-aid to States"³⁷. Also it cannot be easily denied that in actual practice the successive Finance Commissions have largely accepted the guidelines thus laid down in the terms of reference for the fixation of grants-in-aid to the States. In spite of the fact that important additional items have been referred to the Sixth Finance Commission, for example, firstly, to undertake a general review of the States' indebtedness to the Centre and suggest changes in the existing terms of repayment of the States' outstanding loans to the Centre and secondly, to review the policy and arrangements in regard to the financing of relief expenditure by the States affected by natural calamities, nevertheless," It holds true that its terms of reference seek to impinge on the freedom and authority which the constitution confers upon the Finance Commission"³⁸.

Thus, the scope of the Finance Commission is not as pervasive as that of the Planning Commission. The position that has crystallised today is that there are two agencies for effecting transfer of resources from the centre to the States. Under Article 275(1) of the constitution the States receive grants-in-aid which are given, as in all

37. "Centre State Financial Relations I - Scope of the Finance Commission", in Economic and Political Weekly, May, 12, 1973, p. 875.

38. ibid.

federating entities, with a view to levelling off the status of the various units. The quantum and mode of this assistance are determined by the Finance Commission. Under Article 282 discretionary grants are given to the States on the recommendations of the Planning Commission which is a non-statutory body. While to some extent financial devolution is effected on the award of the Finance Commission, an increasing part of financial assistance from the Centre flows to the States on the advice of the Planning Commission. "Over the years, Central grants to the States made for Public purpose under Article 282 of the constitution on the recommendations of the Planning Commission have become more important in quantum and nature than the grants made under Article 275 on the recommendations of the Finance Commission"³⁹.

The extent to which grants are transferred on the recommendations of the Planning Commission and the Finance Commission shall become clear by the following table (Table-VI).

39. BHARGAVA (P.K.), "Centre State Financial Relations In India" in Journal of Constitutional and Parliamentary Studies, Volume VII, No. 3, 1973, p. 116.

TABLE-VI: Comparative Growth of Discretionary and Statutory Grants.

PERIOD	(Rs. in Crores)				
	Discretionary grants*	Yearly average	Statutory Grants**	Yearly average	Discretionary grants as percentage of Total grants.
Third Plan 1961-62 to 1965-66	1011	202.2	292	58.4	77.5
Annual Plans 1966-1969	1113	371.0	423	141.0	72.4
Fourth Plan 1969-70 to 1973-74.	2832	566.4	711	142.2	79.7

Sources:-

- i) Report of the fifth Finance Commission
- ii) Report of the sixth Finance Commission
- iii) Govt. of India, Ministry of Finance, General Budget Explanatory Memorandum from 1961-62 to 1973-74.

Note: * Discretionary Grants here include plan grants and other non-statutory grants.

** Grants under Article 275(1) substantive provisions.

The magnitude of grants transferred on the recommendations of the Planning Commission and the Finance Commission is clearly reflected from the above table which makes it quite evident that the grants given to States under Article 282 are far greater than the grants given under Article 275 on the recommendations of the Finance Commission.

During the Third Plan period, the total amount of discretionary grants transferred to the States was Rs. 1101

Crores while the amount of statutory grants was just Rs. 292 crores during the same period. The yearly average of the grants recommended by the Planning Commission and the Finance Commission works out to be Rs. 302 Crores and Rs. 58 Crores respectively during the Third Plan period. This shows a great difference in the amount of grants transferred by the two bodies. During 1966-69 the annual average of discretionary grants increased to Rs. 371 Crores while statutory grants' annual average increased to just Rs. 141 crores. It is during the Fourth Plan period that one can see a massive increase in the amount of discretionary grants which was about Rs. 2832 Crores, while the amount of statutory grants was just Rs. 711 Crores. This is a pointer to the fact that the grants recommended by the Planning Commission have far exceeded the statutory grants recommended by the Finance Commission. The percentage of discretionary grants to the total grants transferred to States has remained 77, 72 and 80 during the Third Plan period, three Annual Plans period and the Fourth Plan period respectively. This shows the extent to which States are at the discretionary mercy of the Central Government and the extent to which they are benefiting from the grants provided for in the Constitution. The excessive amount of discretionary grants transferred to States by the Central Government has given the latter

a powerful leverage in influencing the policies and programmes of State Governments even in spheres which are constitutionally within the competence of States.

The less significant position of the Finance Commission vis-a-vis Planning Commission can be seen in the fact that out of the total amount transferred to States, the statutory transfers form a substantially less portion. This is borne out by the fact that during the First, Second and Third Plan period the resources transferred through Finance Commission formed just 31 percent, 32 percent and 28 percent⁴⁰ respectively of the total amount transferred to States. During 1966-69 this percentage was further reduced to 25 percent⁴¹. This is a pointer to the fact that to a large extent States had to remain dependent at the 'discretionary mercy' of the Central Government for the transference of funds during the above mentioned period. During the Fourth Plan period out of the total amount transferred to States which was Rs. 14,853 Crores, the resources transferred through Finance Commission was Rs. 5316 Crores⁴². This formed about 35.7 percent of the total amount transferred to States. Though, during the Fourth Plan the percentage of statutory transfers increased to some extent, nevertheless, the fact remains that the Finance Commission controls only about 1/3rd of the total resources transferred

40. Report of the Sixth Finance Commission, 1973

41. ibid

42. ibid

to States. This has weakened the position of the Finance Commission in relation to the Planning Commission in the past. Consequently, this has resulted in strengthening the Central Government to exercise greater degree of financial control on the States. Thus the, "Planning Commission set up by an executive order has far surpassed the quasi-judicial body which has been created by a law of the Parliament under the provisions of Article 280 of the Constitution"⁴³.

The Planning Commission helps in the formulation of States' Plans in an overall perspective of a nationwide strategy of growth. For that purpose it considers the budgets of the State Governments in their entirety not excluding the non-plan revenue and capital expenditure. After this is done, it determines its quantum of assistance to States. Admittedly, the Planning Commission's role in regard to allocation of Central assistance to States is much more decisive and effective. The following table(VII) shows the assistance provided by the Planning Commission to States for Plan purposes.

The Financial assistance provided by the Central Government on the recommendations of the Planning Commission

43. SARAY (A.J.), and SINHA(S.N.), art.cit. p. 474.

TABLE-VII: Disbursement of Central Assistance to States for Plan purposes (1965-66 to 1975-76)

Year	(Rs. in Crores) Amount
1965-66	675.75
Total III Plan	2515.49
1966-67	582.78
1967-68	594.75
1968-69	616.90
Total Annual Plans	1794.43
1969-70	634.52
1970-71	656.01
1971-72	724.71
1972-73	764.99
1973-74	754.47
Total IV Plan	3534.70
1974-75	859.03
1975-76	1105.31

SOURCE: Information obtained from the office of Planning Commission, Parliament Street, New Delhi.

- Notes:**
1. Central Assistance includes Discretionary Grants and loans only for Plan purposes.
 2. Figures for 1974-75 and 1975-76 are that of the allocated amount of Central Assistance.

to States for plan purposes has been increasing appreciably in the past. As reflected in Table VII, the total amount of financial assistance provided during the Third Plan period was Rs. 2515.49 crores. This amount increased to Rs. 3534.70 Crores during the Fourth Plan period. This

shows an increase of 40.5 percent over the amount of financial assistance provided during the Third Plan period. The increasing amount of financial assistance provided to the States is a pointer to the fact that the Central Govt. can exercise a good deal of control on the State Plans through this instrument. It has been rightly pointed out, "The central Government has now got a fresh instrument in the Plan and Plan assistance to introduce national bias in State Policies"⁴⁴.

Another important trend in Indian Planning which is helpful in making the Central Government strong enough to exercise its influence on the State Plans is the rapidly increasing size of the Plan outlay of the Central Government. It is seen that in the past few years the plan outlay of the Central Government has been increasing at a much rapid pace than of all the States taken together. Not only this, very often the manner in which States should undertake developmental efforts has also been attempted to be dictated by Central authorities. Table VIII shows yearwise plan outlay of the Central and the State Government. Table VIII makes it quite clear that the Plan outlays of the State Governments have continued to remain considerably less than the Plan outlays of the Centre after 1965. In the

44. KHARKHATE (P.R.) and BHATT (V.V.), art. cit., p. 371.

TABLE-VIII: Plan Outlay of the Central and the State Governments (1965-66 to 1975-76).

Year	(Rs. in Crores)	
	Plan outlay of the Centre.	Plan outlay of the States
1965-66	1108.44	1122.61
1966-67	1148.00	1009.00
1967-68	1172.00	1010.00
1968-69	1319.73	952.33
1969-70	1272.84	932.01
1970-71	1574.86	1168.59
1971-72	1700.66	1387.91
1972-73	2307.17	1601.75
1973-74	2441.83	1836.00
1974-75	2628.88	2116.50
1975-76	3160.51	2711.48

SOURCE: Planning Commission, Annual Plan Reports, 1965-66 to 1975-76.

period covered by the three Annual Plans 1966-69, total development outlay amounted to Rs. 6804.43 crores, out of which the outlay of the Centre and the States was Rs. 3639.73 crores and Rs. 2971.33 Crores respectively. It means that Centre's share formed 53.4 percent of the total development outlay while State's share formed just 43.6 percent. This reflects a significant difference between the Plan outlay of the Centre and the States during the said period. This gap further increased during the Fourth Plan period. The total Plan outlay of the Centre amounted to Rs. 9297.36 Crores and that of the States to Rs. 6926.26 Crores. This shows that Centre's outlay formed 56 percent of the total public sector

outlay while that of the States formed just 41.7 percent. This is a pointer to the fact that the outlay of the Central Government has increased much rapidly after 1969 in comparison to States. Even during 1974-75 and 1975-76 the Plan outlay of the Central Government remained considerably higher than that of States' as shown in Table VIII. The higher outlay of the Central Government subsequently enhances the control of the Central Government in the implementation of Plan and developmental programmes.

Apart from this, the Central assistance provided by the Central Government to the States for plan purposes, forms a significant part of the total plan outlay of States. This is borne out by the fact that during 1966-69 Central assistance formed nearly 60 percent of the total plan outlay of States. During the Fourth Plan period the amount of Central assistance stepped up to Rs. 3534.70 crores which formed about 51 percent of the total Plan outlay of States. The yearly average amount of Central assistance provided to States during 1966-69 was Rs. 598 crores. This amount increased to Rs. 707 Crores during the Fourth Plan period. Even after 1974 this amount is increasing constantly as shown in Table VII.

Thus, Central assistance to States in the fulfilment of their plan targets outside the recommendations of the Finance Commission has been on increase both relatively and absolutely.

"Theoretically a State is free to reject central discipline of this nature, if it is prepared to forego the large sums offered by the Centre for the plans. In practice it has no choice but to accept, for even the richest State is too poor to afford such deprivation"⁴⁵.

Thus financial assistance under Article 282 has become a weapon of decisive power. It is this that gives the Centre the power and the opportunity to decide what the outlay on State Plans should be, how it should be distributed among different schemes in the Plans and in what way the amounts earmarked for each scheme should be spent. "The rapid increase in Union assistance under Article 282 indicates that administrative centralization is taking place rapidly in the Union Government"⁴⁶.

The impact of Planning on the Union-State fiscal relations can be seen in terms of increasing indebtedness of States towards the Centre. A sizeable portion of the central assistance to States for plan purposes is given in the form of loans. Thus, with the increase in Central assistance from the centre for Plan purposes the debt of States also increases simultaneously.

45. Report of the Study Team on Centre-State Relations, (A.R.C.), op. cit., p. 93

46. RAO (N.E.), op. cit., p. 137.

The financial dependence of States on the Union Government for borrowed funds has resulted in the centralization of ways and means position of public authorities in India to a large extent. Central loans to States is a unique feature of Indian public finance.

✓ Under Article 293(2) of the Constitution the Union executive can give guarantees to loans borrowed by a State Government or may make loans to a State Government. But this power of giving guarantees or making loans to a State is subject to limits laid down by Parliament. And if any part of a loan that has been made by the Union to a State remains outstanding a State must obtain the consent of the Union before raising any fresh loan⁴⁷. Such consent may be subject to such limitations as the Government of India may have thought fit to impose⁴⁸. The Union can control the borrowings of States as all the States are indebted to the Union and must secure its consent before raising any loan.

Thus, we see that large extent of controlling powers as regards borrowing has been vested in the hands of the Central Government. A larger percentage of the indebtedness of States is to the Government of India. Table IX shows the amount of outstanding debt of States towards the Central Government.

✓ 47. Article 293(3)

✓ 48. Article 293(4)

TABLE-IX: Outstanding Debt of States towards Central Government (1965 to 1976)

(As at the end of March)

		(Rs. in Crores)
YEAR		AMOUNT
1965	...	3559
1966	...	4103
1967	...	4687
1968	...	5197
1969	...	5569
1970	...	5982
1971	...	6353
1972	...	6756
1973	...	8010
1974	...	8611(RE)
1975	...	9279(RE)
1976	...	9781(BE)

SOURCE:- Reserve Bank of India, Report on Currency and Finance, from 1968-69 to 1974-75.

The total outstanding debt of the State Governments towards the Central Government was Rs. 3559 Crores at the end of March 1965 as shown in Table IX. The amount of the outstanding debt of States kept on increasing constantly after 1965 and by 1969 it went upto Rs. 5569 Crores. During the Fourth Plan period, the amount of outstanding debt towards the Centre increased at a much rapid pace i.e. by 66 percent. Thus, it becomes quite evident that due to continuously increased flow of central loans to States

mainly for plan and developmental purposes the debt of States towards the Central Government is accentuating year by year.

The expansion of the Public Sector regardless of whether belongs to the Centre or the States, has further imposed an obligation on the Union to find the necessary funds to States for their capital expenditure. Further, as the States cannot raise any new loans without the concurrence of the Union Government as they are indebted to it, their dependence on central loans is ever on the increase.

The heavy load of debt which States have to bear has naturally led to a steadily increasing repayment obligation in the shape of interest and instalments of principal. If all borrowings had been for productive purposes there would have been no difficulty in meeting the obligation. But much was borrowed for investment on roads, buildings and educational and health services which do not bring any money return. Therefore, States find it necessary to borrow afresh from the Centre to meet their debt obligation.

Thus, by virtual centralization of ways and means, the Central Government has become the sole lender to State Governments. This centralization avoids competition for loanable funds in the capital market, and makes the State Governments dependent on the Centre to a large extent.

From the above analysis it can be concluded that the tendency towards financial centralization is a conspicuous feature of the operational dynamics of Indian federalism. Apart from the constitutional provisions which have tended to make the central Government financially strong in comparison to States, the extra constitutional agency of the Central Government, i.e. Planning Commission has also helped to a large extent, in accentuating the financial control of the Central Government on States.

With regard to financial position of the Centre vis-a-vis States it can be concluded that the resources of the Central Government have increased rapidly after 1965 and on the other hand the developmental expenditure of the States has shown a rapid increase resulting in widening the gap between the resources and needs of States. This has further resulted in a large scale transfer of amount from the Centre to States. The magnitude of amount transferred to States increased tremendously after 1965 and especially during the Fourth Plan period. Thus, the position that has emerged after 1965 is that the Union has gathered to itself resources to an extent that it is in a position to influence States to adopt its policies and programmes, even in regard to State subjects by such inducements as subsidies, loans and discretionary grants. This has resulted in considerable centralization in the sphere of finance.

The impact of Planning on Union-State financial relations has become more evident after the Third Plan period. This is proved by the fact that the amount of discretionary grants and loans has been increasing with a remarkable speed and has overshadowed the statutory grants recommended by the Finance Commission. The Centre, which the Constitution intended to operate only in the Union field, has by the device of granting discretionary grants and loans, managed in the matter of planning and development, to step into substantial areas of the concurrent and the State fields of activities.

Thus, it can be concluded that the States have remained dependent more on the discretionary financial subventions of the Central Government than on the statutory transfers within the framework of the Constitution. This has footered the tendency towards financial centralization which has become more manifest after the Third Plan period.

CHAPTER - VADMINISTRATION OF LAW AND ORDER

The operational dynamics of Indian federalism reveals a perceptible trend towards administrative centralization which has become more conspicuous after 1965. Although the Constitution of India provides a clear-cut distinction of legislative competence between the Union and the States, it does not contain any such bifurcation of the administrative machinery. "The Union does not possess any exclusive machinery for administering its laws, and the States may be used as the administrative agents of the Centre"¹.

Since, administration of law and order is one of the aspects of administrative relations between the Union and the States under the constitution of India, it would be desirable to have a glance at the constitutional provisions pertaining to administrative relations between the Union and the constituent units. At the same time it would be essential to examine the legal position in this respect since the administrative aspects of Union State relations in the sphere of law and order are inseparable from the legal aspects.

1. NAY(AHAL), Inter Governmental Relations in India, Bombay, Asia Publishing House, 1966, p.46.

Constitutional and Legal Position:

As in most federal constitutions, broadly speaking, under the Indian constitution, the executive power of the Union and States extends to matters with respect to which the Union and the States are competent to make laws. These powers are granted by the Union by Article 73 and to the States by Article 162. But the executive power of the States with regard to the concurrent field of legislation is limited by "the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof"².

Ordinarily the executive power in respect of concurrent list is vested in the States. But the above provisions of the Constitution enable the Union Parliament to bestow such power upon the Union or to authorize the Union to issue necessary directions to a State for exercising its (States') executive power in such a manner : (i) as to ensure compliance with Parliamentary legislation and any existing law applying to that State (Article 256), and (ii) as not to impede or prejudice the exercise of the executive power of the Union [Article 257(1)]. Similar powers of issuing directions are available to the Union in regard to measures to be taken for protection of the railways [Article 257(3)] as also in regard to construction and maintenance of means of communications declared to be of national or military importance [Article 257(2)].

2. Article 162.

Thus, the Central Government's power to issue directions to the States puts limitations on the executive power of the States. Apart from this, the provisions embodied under Articles 355 and 365 further enable the Central Government to exercise its executive powers on the States. These Articles read as follows:

"355. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution".

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

Under the above provisions of the Constitution an obligation has been placed on the Centre to protect the States from 'external aggression and internal disturbance and also to ensure that they function in accordance with the provisions of the Constitution'. Both external aggression and internal disturbance imply the use of force. To protect the States against force, some counter-force must be used, and this duty has been cast upon the Centre. Therefore, it is the Centre's forces that have to be employed in case the State is unable to or fails to fulfil its duties.

The seventh schedule to the Constitution makes a clear demarcation of the operational areas of the Centre and the States. The State Government is primarily charged with the duty of maintenance of 'Public order' in exercise of the executive power of the State under Article 162 as read with entry 1 of the State list. It may do so through the agency of the police, which is the civil force charged with the duty of maintaining law and order. Thus, to maintain law and order has so far remained the prime responsibility of the State government. But in the recently enacted 42th Amendment Act, some important changes have been made in the Union list and the State list with respect to maintenance of law and order. They are as follows:

57. In the Seventh schedule to the Constitution -

(A) In List I- Union List, after entry 2, the following entry shall be inserted namely:-

"2A. 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"

(B) In List II - State list -

(I) In entry 1, for the words " the use of naval military or air forces or any other armed forces of the Union" The words " the use of any naval, military or airforce or any other armed forces of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof" shall be substituted.

(II) For entry 2, the following entry shall be substituted, namely:-

"2 Police (including railways and village police) subject to the provisions of entry 2A of list I".

Thus, the above additions made in the Union list and the State list by the forty-two Amendment Act have further armed the Central Government with enormous powers to deploy its armed forces in the States for maintaining law and order. Consequently, the powers of the State Governments in this respect have become somewhat limited in nature. However, the first three items in the concurrent list are same as before (except the first entry) which read as follows:

"1. Criminal law, including all matters included in the Indian Penal Code at the Commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in list I or list II and excluding the use of any naval, military or airforce or any other armed forces of the Union or of any other force subject to the control of the Union or of any contingent or Unit thereof".

"2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution".

"3. Preventive detention for reasons connected with the security of supplies and services subjected to such detention".

The provisions of the Code of Criminal Procedure relating to the use of armed forces in aid of the civil power as they stood so far conferred power to the State Government to vest magisterial powers in individual officers to carry out their functions to maintain law and order. But, now it appears that in the light of the recently enacted forty-two

Amendment Act, changes may be made in the Code of Criminal Procedure. However, the present position is as follows.

Provisions of Code of Criminal Procedure:

The sections relating to the use of armed forces in aid of civil power are 129, 130, 131 of the Code of Criminal Procedure. These read as follows:-

"129. Use of armed forces: If any such assembly* cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces."

"130(1). Duty of Officer Commanding troops required by Magistrate to disperse assembly: When a Magistrate determines to disperse any such assembly by the armed forces, he may require any officer thereof in command of any group of persons belonging to the armed forces to disperse such assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law".

"130(2). Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons?"

"131. Power of Commissioned armed forces officers to disperse assembly: When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; if, while he is acting under this

* An unlawful assembly is meant - vide section 127 (1) of the Code of Criminal Procedure.

section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thence forward obey the instructions of the Magistrate as to whether he shall or shall not continue such action".

The Constitution and the law, thus, indicate that while the maintenance of law and order and protection of life and property is primarily the responsibility of the State Government, the Union has the authority to intervene when the State Government is unable or unwilling to discharge its responsibility. The first item in List II of the seventh schedule also limits the State powers regarding public order to cases where the armed forces of the Union are not employed in aid of the Civil power. Here, it is to be noticed that the question of aid of the armed forces of the Union to the civil power of the State does not arise only when the latter asks for it, as is borne out by Articles 355 and 256. When the civil power of the State is unable or unwilling to carry out its duties then the Centre is bound by Articles 355 and 256 to employ its armed forces to help in the carrying out of these functions, or to take them over entirely if the civil power ceases to function.

Though, the constitution and the law assign a number of powers to the Central Government to exercise its administrative control with regard to maintenance of law and order in the States nevertheless, the fact remains that the

maintenance of law and order and protection of property whether central or State, have remained the primary responsibilities of the State Government. "Actually at the time of constitution making an unsuccessful attempt was made to transfer 'Public Order' to the Central List"³. Brajeshwar Prasad through an amendment sought to give the Centre the power for protection of public order. He argued, " There are dangers within and without, and we cannot depend upon the loyalty of the provincial administration in times of crisis. Centrifugal forces have been the base of our political life since the dawn of history. I, therefore, urge that Public Order should become central subject"⁴. Ambedkar and others resisted this attempt and the amendment was lost: "Discussions in the Constituent Assembly on this issue would unmistakably show that the Makers did not envisage any central machinery for the protection of law and order"⁵.

About the protection of central property also the founding fathers were of the view that it would fall within the constitutionally delimited sphere of the States.

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3. RAY (ASAL) Tension Areas in India's Federal System, Calcutta, The World Press Ltd., 1970, p. 56.
 4. Constituent Assembly Debates, Vol. IX, pp. 864-65.
 5. RAY (ASAL), Tension Areas In India's Federal System, Op. cit., p. 56.

Ambedkar's statement on the scope of Article 257(3) is in this connection, revealing. He said, "All Police, first of all, are in the list of II (State List). Consequently, the protection of railway property also lies within the field of State Governments. It was felt that in particular cases, the Centre might desire that the property of the Railway should be protected by taking special measures by the state and for that purpose the Centre now seeks to be endowed with power to give directions in that behalf"⁶.

Keeping in view the administrative structure of Indian federalism it can be said that a State Government has been assigned the primary duty of maintaining law and order including safeguarding of property. However, the operational dynamics of Indian federalism has shown that the Central Government in the past few years, has built up a considerably strong machinery to administer law and order in the States. Armed forces of the Union include not only the military (Army, Navy and the Air Force), but also its armed police forces, such as the Central Reserve Police Force, the Border Security Force, the Central Industrial Security Force and Assam Rifles. With the help of these several police organizations, which the Central Government has at its disposal, the latter has been able to exercise its influence and control on the States with respect to maintaining law and order to a significant extent.

6. Constituent Assembly Debates; op.cit.

It is the main objective of this chapter to examine the extent to which the Central Government has been able to exercise its influence and control on the States in the maintenance of law and order with the aid and assistance of these several para military forces especially after 1965. Special emphasis has been laid on examining the role of the Central Reserve Police Force. Other police forces of the Central Government, like the Border Security Force, the Central Industrial Security Force and Assam Rifles have also been dealt with, and an attempt has been made to have a cursory glance at the growth and development of these forces over the last ten years.

These forces i.e. Central Reserve Police Force, Border Security Force, Industrial Security Force and Assam Rifles shall be dealt with successively.

CENTRAL RESERVE POLICE FORCE:

The central Reserve Police Force is perhaps the most significant paramilitary force of the Centre which is being used for maintaining law and order in the States by the Central Government. This force evolved gradually since its inception till 1965. But after the said period its strength increased abruptly and it was frequently deployed by the Central Government in various States. Lot of controversy arose on the use and the role of the Central Reserve Police Force after 1967. Two main constitutional issues that arose were: Firstly, Is the Central Reserve

Police Force compatible with the basic scheme of India's federal constitution and secondly, if the centre can use its own police force for the protection of property and for maintaining law and order in the States then its power of giving directions to the States seems to be somewhat non-compatible.

Now it is to be seen to what extent CRPF is becoming an increasingly important force of the Central Government in maintaining law and order in the States. For this purpose, the said Force will be examined in terms of its growth, deployment and expenditure incurred on it.

Origin and Growth of CRPF:

The Central Reserve Police Force, formerly known as the Crown Representative's Police was first raised in 1939 with a strength of one battalion for helping the former Indian States in the protection of law and order. Since then, the Force has travelled a long way. In 1949, a legal footing was given to it. The legality of Central Reserve Police is derived from a legislation known as the Central Reserve Police Force Act, 1949⁷. Section 1(2) of the said Act says that the Act "extends to the whole of India". Thus, no part of the country is free from the jurisdiction of the legislation. Section 18(1) provides that "The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act".

7. India Code, vol. 1, Part VIII.

Purcuant to the powers conferred by section 18(1), the Union Government made rules known as Central Reserve Police Force Rules 1956⁸. Rule 25(a), which lays down the 'primary duty' of the Central Reserve Police States, "Members of the Force may be employed in any part of the Indian Union for restoration and maintenance of law and order, and for any other purposes as directed by the Central Government".

Thus, the Central Reserve Police Force has been assigned a wide field of operation. The Central Govt. can deploy this force in any part of the country. Moreover, it is the discretion of the Central Government to determine the purposes for which the Central Reserve Police may be used. This gives way to the tendency towards administrative centralization. This tendency seemed to be quite apperent in Indian Federation after 1967. This is borne out by the fact that the strength of CRPF increased sharply after the said period.

TABLE-I
GROWTH OF CRPF

Year	Number of Battalions	Number of Battalions raised over the previous years.
1939	1	-
1948	2	1
1956	3	1
1957	6	3
1959	10	4
1962	14	4
1965	17	3
1967	24	7
1968	46	22
1969	52	6
1971	60	8
1975	60	-

Sources:- Govt. of India, Ministry of Home Affairs; Annual Report from 1956-57 to 1974-75.

8. The Gazette of India, March 5, 1955

Table I shows the growth of the Central Reserve Police Force from 1939 to 1975. It is quite evident from the Table that this Force grew at a slow pace till 1965. The total number of battalions raised within a span of 26 years was just seventeen. But after 1965, major expansion took place in the strength of this Force. This is borne out by the fact that in the year 1967 the number of battalions went upto 24 as against 17 in 1965. This shows that seven more Battalions were raised within two years. The year 1968 is the most conspicuous one with regard to the growth of CRPF. In the said year, remarkable increase took place in the number of battalions of CRPF which went upto 46 which was nearly double than the strength of the Force in the previous year. Thus, within a year twenty two more battalions were raised. In 1969 six more battalions were raised bringing the total strength of the battalions to 52.

Although with the creation of the Border security Force in the year 1965 the Force was by and large relieved of its duties to guard the International Borders yet the Naxalite menace in West Bengal, insurgency problems in Nagaland and Mizoram and the general deteriorating law and order conditions in the country resulted in an unsatisfiable demand for the deployment of the CRPF. To cope up with this demand the Government kept on raising the strength of this Force and yet another major expansion

took place in the year 1971 when eight more battalions were raised bringing the total strength to 60. After 1971, the strength of the Force has remained almost unchanged.

Thus, the growth of the Central Reserve Police Force was more significant after 1965 as reflected by Table I. Within six years that is from 1965 to 1971 the strength of the force increased by nearly three and a half times. This shows the increasing importance of this Force and its increased deployment during 1965-1971.

Organisation and Deployment:

The Central Reserve Police set up comprised a Director General at the Summit who is assisted by a Directorate General consisting of several wings such as Administration, Provisioning, Training, Operation, Works and Wireless Adviser. For purposes of Field Command the Force has been divided into three sectors each under an Inspector General. Sectors are split into Ranges each under a Range Deputy Inspector General. On an average a Range DIO has to look-after 6 Battalions and two Group Centres. In 1975 there were fifteen Group Centres and Sixty Battalions each one under a Commandant.

The Central Reserve Police Force was increasingly deployed in States after 1967. After the Fourth General Elections the political situation in the Country had substantially changed. Now Congress parties formed Ministries in several States. The confrontation with the Centre became sharper in States where non-congress Governments had been

formed. Consequently the Central Government deployed the Units of the Central Reserve Police Force extensively in the States for the purpose of maintaining law and order⁹.

During the period 1968-1974, for instance, the CRPF was deployed twice in Andhra Pradesh (1968, 1972-73). During 1968, the units of the Force were despatched to the State to deal with the Telengana agitation and Naxalite menace. In the wake of Anti-Mulki Rule agitation and demand for bifurcation of the State more units of the Force were inducted in 1972 and 1973. CRPF contingents were deployed extensively in the nerve Centres of the Separatist agitation. Again in the beginning of 1975 some companies of the Force remained deployed to meet emergent law and order situation.

In Karnataka, the CRPF was deployed twice during the period 1968-1974 ('70, '71). During 1970 this Force was deployed in the State for law and order duties in connection with Maharashtra Karnataka border disputes. Again during 1971, the Force was sent to the State for law and order duties.

In Kerala, the CRPF was deployed several times during the period 1968-74. It was deployed in 1968, 1969, 1970 and 1972. In September, 1968, at the time of the Central Government employees' strike in Kerala the Central Government sent the units of the Central Reserve Police to handle law and order situation in the State. It was alleged

9. Information with regard to deployment of CRPF has been obtained and computed from diverse official publications of Ministry of Home Affairs, Govt. of India.

by the State Government that the CRPF was sent by the Central Government against the expressed wishes of the former¹⁰. Again in 1969 more units of the Force were sent to Kerala for maintaining law and order. During 1970, more companies were inducted to deal with the deteriorating law and order situation consequent to Naxalite activities in Kerala. In 1972, the Force was further deployed in the State to deal with the situation created as result of students trouble and land grab agitation.

The CRPF was deployed in Tamil Nadu once in 1972, twice in 1973 and on various occasions for short spell of duty in 1974. In 1972 the CRPF was deployed in the State in connection with the processions organised by AIKK. During June/July 1973 the Force was made available to the civil administration for law and order duty at the time of large scale demonstrations by Agriculturists Associations all over Tamil Nadu. Again, in September '73 the Force was further deployed for law and order duties in connection with Tamil Nadu Bunch and students' agitation.

The CRPF was deployed several times in the North Eastern States during 1968-1974.

For instance, in Assam the Force was deployed twice in 1968, and once in 1969, '70, '71, '72 and '74. During 1972 the Force was sent to assist the local administration

10. This case has been dealt with in detail later on in this Chapter.

to maintain law and order in connection with the disturbances on language issue. In 1974 the Force was deployed in the State for law and order duties in connection with students' trouble.

In Arunachal Pradesh and Nagaland the CRPF continued to remain deployed on a semi-permanent basis during 1968-74. In Arunachal Pradesh, four battalions were deployed in 1968. Again in 1974 one more battalion was inducted in the State making total of five battalions one each in five districts of Arunachal Pradesh for internal security duties. In Nagaland, during 1968 the CRPF was deployed for counter-insurgency duties against Naga hostilities. More and more companies of the Force were inducted in 1969, 1970, 1971 and 1972 for handling law and order situation in the State.

In Manipur also the CRPF remained deployed on a semi-permanent basis for internal security duties during 1968-1974. In Meghalaya, the Force was deployed during 1971, 1972 and 1974. The contingents of CRPF helped the State administration in maintaining law and order at the time of agitation against Central University Act. In Tripura, the Force was deployed twice during the period 1968-1974 ('68, '69) to meet the deteriorating law and order situation. In Sikkim the Force was deployed during 1973 and 1974 in the wake of large scale disturbances due to political agitations.

The CRPF was deployed on a number of times in the Eastern Zonal States of Bihar, Orissa and West Bengal during

the period 1968-1974. These States remained more prone to the deployment of CRPF during the said period. For instance in Bihar the CRPF was deployed five times ('68, '69, '70, '72 '74). In 1970, the units of the Force were deployed in Bihar in the wake of serious communal trouble in Chaibasa. In 1972 when large scale disturbances were created due to students and Government Servants agitations, the CRPF was sent to the State to deal with the grave law and order situation. Again in 1974, this Force was sent to the State to assist the local administration to deal with the serious law and order situation created by Students' agitation led by Shri Jai Prakesh Narain.

In Orissa, during the period 1968-1974 the CRPF was deployed for six times ('68, '69, '70, '71, & '73, '74). The Force was deployed mainly for law and order duties. In West Bengal the Force was deployed in 1969, 1970 and twice in 1971.

In Uttar Pradesh, the CRPF was deployed twice during the period 1968-1974. The Force was sent to the State during May/June '73 in the wake of serious trouble created by UPPAC revolt. Again in the beginning of 1974 the Force was sent to the State. In Madhya Pradesh, the CRPF was deployed on various occasions during 1970-72-73 and 1974 in connection with communal riots, Bhandhe, anti-price rally and students' unrest.

In Himachal Pradesh, the CRPF was deployed during 1970 due to large scale agitations and strike by State Govt. employees. Jammu and Kashmir has remained a major zone for deployment of CRPF due to delicate political situation in the State. During the period 1968-1974 the Force was deployed four times in the State (1968, '69, '70, '71).

In Maharashtra, the contingents of CRPF were sent in the wake of communal riots in Bhiwandi during Feb'70. Again during 1973 the Force was sent to the State for the maintenance of law and order in connection with anti-price demonstrations and communal trouble. In the beginning of 1974, the Force was sent to the State for law and order duties in connection with Maharashtra Bunch. Thus, during the period 1968-74, the CRPF was deployed thrice in Maharashtra. In Gujrat the Force was deployed twice during the period 1968-1974, once during 1969 in the wake of serious communal troubles and mass violence which resulted into killing and arson and for the second time during 1974 in maintaining law and order in connection with large scale students disturbances.

In Rajasthan, the CRPF was deployed four times during the period 1968-1974. It was deployed twice during 1972 for handling law and order situation. In 1973 and 1974 the Force was deployed for law and order duties in connection with communal riots, bunch and students' unrest.

The above survey with regard to deployment of the Central Reserve Police Force reveals that this Force was

deployed by the Central Government in almost all the States during the period 1968-1974. However, it was deployed more frequently during the period 1968-1971. Its main reason being that the Central Government had to face a serious confrontation with the States where non-congress governments had been installed after the fourth General Elections¹¹.

The deployment of CRPF after the Fourth General Elections gave rise to a bitter controversy between the Union and the States on the issue of their respective administrative spheres. This controversy became particularly sharp during the years 1968, 1969 and 1970. The main point of dispute that arose in this context was the deployment and use of the Central armed forces against the expressed wishes of the State Governments. The Central Government asserted its authority to deploy its armed forces in the States for maintaining law and order and for protecting the Central property

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11. The Fourth General Elections, 1967 constitute a landmark in the annals of the Indian political system. As a result of these elections the dominance which the Congress party had enjoyed for twenty years was lost; as the Congress was returned to power at the Centre with a much reduced majority and failed to win an absolute majority in eight of the States. These States were Bihar, Kerala, Madras, Orissa, Punjab, Rajasthan, U.P. and West Bengal. This change in the political system was a shift from one party dominance to multi-partism. In Kerala the communists formed a Government. In West Bengal, United Front of Leftist parties formed a Government; in Tamil Nadu, D.M.K., in Punjab Akali Dal and in Orissa, Swatantra-dominated coalition Government. In Bihar a coalition led by SSP was formed. In U.P. Jan Sangh was the largest group in the coalition Government.

even without consulting the States. On the other hand the States considered the deployment of the Central forces as an encroachment upon their constitutional right to maintain law and order. In this context two instances are quite conspicuous. They are of Kerala in 1968 and of West Bengal in 1969.

In September, 1968, at the time of the Central Govt. employees' strike in Kerala, the Centre sent Central Reserve Police units to Kerala for protection of its offices and property there, without informing the Kerala Government in advance. Since no consent of the State authorities was sought, Namboodripad, the then Chief Minister of the State considered the Centre's action as an encroachment upon the State jurisdiction. The then Home Minister Y.B. Chavan, however, justified the legality of such action through an insistence on written law. It was further explained that in this particular case the attitude of the State Government towards the problem of maintaining law and order in connection with the agitation of Government employees had left no option but to deploy the CRP without previous intimation of the State Government¹². The State Government was also asked by the Home Minister to take action against such persons as were inciting or intimidating Central Government employees. Chief Minister of the State protested against Chavan's action and on December 18, his Cabinet decided to withdraw with the permission of courts, all cases connected with the strike other than those involving serious attacks on persons and property¹³. The Union

12. The Indian Express, September 17-25, 1968

13. The Hindustan Times, December 19, 1968

Government took a serious view of this decision, and warned the State Government that its action was 'illegal' and 'unconstitutional'.

Another instance of more serious confrontation with regard to the deployment of the Central Reserve Police Force occurred between the Centre and the State of West Bengal in March 1969. On March 24, 1969, the CRPF fired at a mob in the Administrative Building of the Durgapur Steel Plant as a result of which sixty people were injured¹⁴. The then West Bengal Home Minister, Jyoti Basu (CPI-M) sharply reacted to the Central Police action and urged the withdrawal of all Central Reserve Police Units from the State. His main contention was that the maintenance of law and order, including the protection of all types of property - Central, State and private - was within the constitutionally delimited jurisdiction of the State Government. As Basu bluntly said, "There cannot be two parallel forces in the State"¹⁵. The action of the CRP was, however, justified by the Union Home Ministry on the ground that the Central Police had to move into action, because the local Police, who were informed earlier by the Steel Plant Management, expressed their difficulties in providing protection. The then Union Minister of State for Home, Shukla, explaining the Government's policy

14. The Statesman, March 25, 1969

15. ibid, March 26, 1969

in the Council of States on March 26, said that although normally the protection of Central property came within the constitutional jurisdiction of the State Government, when it was not available, it was the duty of the Centre to make alternative arrangements for protection¹⁶. However, the statement did not mention whether the Steel Management had approached the State Home Ministry for protection of its property when the local police expressed their inability in this matter.

Relations between New Delhi and West Bengal further deteriorated as a result of Cossipore firing in April, 1969. On April 8, 1969, the Defence Security Corps personnel at the Gun and Shell Factory, Cossipore (West Bengal) resorted to firing to disperse a violent mob of workers and this resulted in the death of five persons¹⁷. The United Front and its trade union wing, the Rashtriya Sangram Samiti, organised the "Bangla Bandh". The State Government lent all its support to the Bandh, and this infuriated the Centre. The Central Government announced the setting up of a single member Commission of Enquiry to inquire into the facts and circumstances relating to the firing. Basu questioned the legality of its appointment. His reaction was particularly sharp, because according to him, no prior consultation in this regard was held with the State Government.

16. The Statesman, March 27, 1969

17. The Indian Express, April 9, 1969.

The above instances show that the Central Government sent its armed police forces in the concerned States against their wishes or without obtaining their approval. Here the point we have to analyse is not whether the action taken by the Central Government in deploying its armed police force was right or wrong. What we have to note is that during the period 1968-1971 the Central Government could make use of its armed police forces without the consent of the State Governments unilaterally. This naturally resulted in enhancing the administrative control of the Central Govt. on the States and restricting the authority of the latter with regard to maintenance of law and order.

Even after 1971, the Central Reserve Police Force continued to remain deployed in several States, as is clear from the survey undertaken in this Chapter.

In January 1975, out of a total of sixty Battalions comprising 420 Coys¹⁸, 145 companies remained deployed in the States of North Eastern Zone comprising Arunachal Pradesh, Assam, Manipur, Meghalaya, Sikkim, Tripura and Nagaland; 77 companies remained deployed in the States of Eastern Zone comprising Bihar, Orissa and West Bengal; 24 companies remained deployed in the States of Jammu & Kashmir of the Northern Zone; 18 companies remained deployed in the

18. One Battalion Comprises seven coys; 6 service Coys and 1 Head Quarter Coy.

States of Andhra Pradesh and Kerala of the Southern Zone; 8 Companies remained deployed in the States of Central Zone comprising Madhya Pradesh and Uttar Pradesh¹⁹.

This shows that out of the total strength of 420 Coys of CRPF, till January 1975, 272 Coys remained deployed in different States. This means that nearly two third of the total strength of the CRPF remained actively deployed in about fifteen States or nearly three fourth of the total States till the beginning of 1975. The deployment was most extensive in the States of North Eastern Zone where the percentage of the total deployed Coys was 53. In the States of Eastern Zone, Northern Zone, Southern Zone and Central Zone this percentage works out to be 28, 9, 7 and 3 respectively.

Thus, the CRPF has remained deployed to a large extent in several States till January 1975.

Expenditure on CRPF:

The CRPF has expanded to a significant extent over the last ten years. This is borne out by the fact that the actual expenditure incurred on this Force continued to increase substantially during the period 1965-1975, as reflected in Table-II.

19. Information with regard to the strength of deployment of the CRPF till January 1975 has been obtained from the Office of Central Reserve Police Force, R.K.Puram, New Delhi.

**TABLE-II: Actual Expenditure Incurred on CRPF
(1965-66 to 1974-75).**

(Rs. in Crores)

YEAR	AMOUNT	Percentage variation over the previous year.	
1965-66	5.75	-	
1966-67	6.95	20.9	
1967-68	8.40	20.9	Overall increase from 1965 to 1975 694 percent.
1968-69	13.43	60.0	
1969-70	22.47	67.4	
1970-71	26.62	18.5	
1971-72	33.33	21.4	
1972-73	36.83	13.9	
1973-74	37.69	2.3	
1974-75	45.60 (RE)	21.0	

NOTE: Information supplied by office of the CRPF, H.K.Puram, New Delhi.

The above table shows that the expenditure incurred on CRPF has been increasing constantly after 1965. The actual expenditure incurred-CRPF in 1965-66 was nearly Rs. 5.75 crores. It increased to Rs. 8.40 crores during 1967-68 or by 46 percent. The increase in expenditure over the previous year in 1966-67 and 1967-68 was 20.9% and 20.9 percent respectively. In the year 1968-69 the expenditure incurred on CRPF increased significantly. It was nearly five crores more than that of 1967-68. The increase during 1968-69 over the previous year rose to 60 percent. Major

expansion in expenditure on CRPF took place in the year 1969-70 which was 57.6 percent more than that of the previous year. This increase in expenditure was mainly on account of significant expansion of the Force and its extensive deployment during that period. After 1969-70 the expenditure on CRPF continued to increase substantially.

Thus, between 1967-68 and 1971-72, the CRPF's expenditure increased by 300 percent. This shows the extent to which this Force expanded during the said period. The expenditure continued to increase to a substantial extent even after 1971-72. This is borne out by the fact that in 1974-75 according to the revised estimates the amount of expenditure rose to Rs. 45.60 crores. Though the strength of the Force did not increase after 1971 (See Table-I), nevertheless, substantial increase in its expenditure during the period 1971-72 to 1974-75 is a pointer to the fact that the CRPF was continued to be deployed by the Central Government to a significant extent during the said period, since out of the total expenditure incurred on the Force, a substantial portion is incurred on its deployment.

Thus, analysing CRPF in terms of expenditure incurred on it, it can be said that within last ten years, due to significant expansion of the Force and more due to its heavy deployment the expenditure on this Force increased at a remarkable pace. This is borne out by the fact that during

the period 1965-66 to 1974-75 the increase in expenditure was of the order of 694 percent (See Table-II). This heavy deployment of the Force makes the Central Government powerful enough to exercise its influence on the administrative power of States with regard to maintenance of law and order.

Now, we shall examine the role of other armed police forces of the Central Government, namely Border Security Force, Central Industrial Security Force and Assam Rifles in the maintenance of law and order in States.

BORDER SECURITY FORCE:

Border Security Force is a significantly important police organization of the Central Government which came into being in December 1965. Prior to December 1965, the responsibility for policing the Indo-Pakistan Border rested with the concerned State Governments. The necessity for a specialized force was keenly felt after Pakistani incursions in the Rann of Kutch in 1965. Accordingly, the Govt. of India established with effect from 1st December, 1965 the Border Security Force under a Director General²⁰. Till July 1968, this Force was governed by the Central Reserve Police Force Act 1955. But in July 1968, the Border Security Force Act was passed²¹.

The main function of the Border Security Force is to safeguard the security of the International Border in times

20. Govt. of India, Ministry of Home Affairs, annual report 1966-67, p. 39.

21. ibid., 1968-69, p. 46.

of peace and in times of war, before the army takes over. Apart from safeguarding the borders, the Border Security Force's units can be deployed in States also to assist the Civil power in maintaining law and order.

Since its inception, the units of this Force have been actively deployed along the Border areas. "On a number of occasions BSF units were temporarily made available to the State Governments to augment the resources of the State police for maintaining law and order"²². In 1968 the BSF's units were sent to the States for reinforcing their law and order machinery²³. The Force progressed rapidly in the fourth year of its existence that is in 1969. The major portion of the Force continued to be deployed on the international border and cease-fire line with Pakistan. It came under operation in 1968 in Mizo Hills and continued to remain there in 1969 also. The Units of this Force were sent out on Internal Security duties several times to the States²⁴.

During 1970, 1971, 1972 and 1973 the BSF remained actively deployed on the borders of West Bengal, Assam, Tripura and Jammu and Kashmir. In 1974 and 1975 the units of the Force were deployed in Uttar Pradesh, Gujrat and Bihar for maintaining law and order²⁵.

22. ibid, 1967-68, p.32

23. ibid, 1968-69, p.46

24. ibid, 1969-70, p.59

25. Govt. of India Ministry of Home Affairs, annual report, 1974-75, p.13.

In 1975, the Force remained "actively deployed along 7,194 Km. long border adjoining Pakistan, Pakistan occupied Kashmir, Bangla Dosh and Burma. More than eighty percent of its troops were deployed on the borders. The Force rendered assistance in maintenance of law and order in the States of Maharashtra, Gujrat and Bihar"²⁶.

Thus, the above description shows that during the last ten years the Border Security Force was deployed mainly on borders, nevertheless, it was sent several times to the States for the task of handling law and order situation. This shows that the Central Government can use this Force for internal security purposes as well.

CENTRAL INDUSTRIAL SECURITY FORCE:

Central Industrial Security Force is another important police organization of the Central Government which is meant for looking after the security arrangements of the industrial undertakings in the Public Sector. The Industrial Security Force came into being in the wake of the Central Industrial Security Force Act, 1968. The said act was passed by Parliament in December 1968 and was brought into force with effect from 10th March, 1969. The CISF has been constituted for better protection and security of industrial undertakings in the Public Sector. So far the security

26. KUNAI (ASHWANI), "BSF, Today and Tomorrow", in BSF News Letter, Anniversary, No. 1975, No. 31, p. 7.

arrangements for important departmental industrial undertakings as well as those in the public sector had been under the separate charge of the watch and ward staff of the concerned organization. "It was felt that unplanned recruitment and inadequate supervision and training had made the existing watch and ward staff ill-equipped to discharge its responsibilities. It was, therefore, considered necessary to constitute a centrally recruited, organized and trained industrial security force"²⁷.

The Force is headed by an Inspector General of Police. The raising of the Force was taken in hand towards the end of 1969 and in the course of one year seven battalions had been raised practically to full strength²⁸. During the year 1971-72, five more battalions were raised bringing the total strength to 12 battalions on the ground²⁹. The sanctioned strength of the personnel of this Force was 23,722 in 1974-75. It was further raised to 23,964 during the period 1975-76³⁰. This shows that the strength of the Force has been increasing constantly. The Central Government is deciding of further increasing the strength of this Force. "In view of heavy demand for induction of the CISF from various public sector undertakings it is proposed to increase the rate of recruitment in the CISF, in the coming years"³¹.

27. Govt. of India, Ministry of Home Affairs, annual report, 1968-69, p. 49.

28. ibid, 1970-71, p.11

29. ibid, 1971-72, p.13

30. ibid, 1975-76, p.23

31. ibid,

The CISF has been inducted into various public sector undertakings since its inception. The following table shows the induction of CISF into various public sector undertakings since 1970.

TABLE-III: Induction of CISF in Public Sector Undertakings since 1970.

<u>YEAR</u>	<u>No. of Public Sector Undertakings</u>
1970	1
1971	13
1972	31
1975	74
1976	82

SOURCE: Govt. of India, Ministry of Home Affairs, annual report, for the year 1970-71, 1971-72, 1974-75, 1975-76.

It is quite evident from the above table that the extent of induction of CISF has been increasing at a much rapid pace since 1970. The first industrial undertaking to have the Central Industrial Security Force was the Durgapur Steel Plant, where it was inducted with effect from 3rd August, 1970. By 1971, the Force was inducted into the thirteen public sector undertakings.³² The extent of induction of this

32. Govt. of India, Ministry of Home Affairs, annual report, 1970-71, p.11

Force further increased in 1972. During 1972 this Force was inducted into thirty one public sector undertakings; these included major Steel Plants, Visakhapatnam Port, Calcutta Port, Cochin Port, Cochin Shipyard, Hindustan Copper Project and Thumba Project³³. By 1974-75 the number of public sector Undertakings where this Force was inducted further increased to 74. Thus, within three years the Force was heavily inducted into substantial number of Public undertakings. By the beginning of 1976 the number of undertakings where this Force was inducted rose upto 82. Thus as a result of its heavy induction the strength of the Force also continued to expand significantly.

Within the framework of Indian Constitution, the responsibility for protecting the property whether central, state or private falls within the delimited jurisdiction of the States³⁴. However, the operational dynamics of Indian federalism reveals that the Central Government has also been exercising good deal of administrative control on the States with respect to protection of property with the help of CISP. Though this Force is made available to the public sector undertakings at the request of the latter nevertheless, the Central Government can also send this Force on its own initiative. This naturally results in enhancing

33. ibid, 1971-72, p.13

34. Entry 1, State list.

the scope of the administrative power of the Central Govt. with respect to safeguarding property.

ASSAM RIFLES:

Assam Rifles is one of the Police organisations of the Central Government which is used in the maintenance of law and order in the States of North Eastern Region.

The Assam Rifles was raised in 1835 as "CACHAR LEVY" and was originally meant for the maintenance of law and order in the Lushai Hills. Since then it has seen considerable expansion in strength and range of activities. The Force was constituted under the Assam Rifles Act 1941 (Act V of 1941) and the Central Government vested its superintendence and control in the Governor of Assam and Nagaland under the provisions of Section III of the Act. In 1965, the administrative control of the Force was transferred from the Ministry of External Affairs to the Ministry of Home Affairs.

The Force is responsible for the maintenance of law and order in the tribal areas of Assam, Nagaland and other States of North Eastern Region. It is also responsible for the internal security duties in the North Eastern Region.

The Force is headed by the Inspector General with headquarters at Shillong. Since 1965, this Force has been actively deployed on the borders of the North Eastern States and on internal security duties in these States. In 1967,

this Force was deployed on policing the borders in NEFA and on internal security duties in Nagaland, Assam and Manipur³⁵. In 1968-69, this Force was deployed under the operational control of the Army for safeguarding the border in NEFA and for the maintenance of law and order situation in Assam, Nagaland and Manipur³⁶. In 1971-72 also it was deployed for policing of the Indo-Tibetan Border in Arunachal Pradesh and on internal security duties in Mizoram, Manipur and Nagaland. In 1975, its battalions were deployed in Arunachal Pradesh, Nagaland, Manipur, Tripura, Mizoram and Sikkim.³⁷

The deployment position of this Force shows that it has been deployed frequently by the Central Government in the North Eastern States for maintaining law and order apart from deploying it for safeguarding the international border adjoining these States.

After having analysed the several police organizations of the Central Government in terms of their growth, deployment and expenditure incurred on them it can be concluded that these Forces have expanded to a great extent after 1965. The increased expansion of these Forces is directly linked with their heavy deployment by the Central Government for maintaining law and order in the States. Due to heavy deployment the expenditure on these forces has also increased substantially.

35. Govt. of India, Ministry of Home Affairs, annual report, 1967-68, p. 33.

36. ibid., 1968-69, p. 48

37. ibid., 1975-76, p. 19

Now the point we have to analyse is that to what extent the Central Government has been able to exercise its administrative control on the States with respect to maintenance of law and order. In this context the main issue that arises is, whether the Central Government used these forces, in accordance with the wishes of the state Governments or against their wishes.

The analysis of CRPF shows that during the period 1968-71, the Central Government used this force against the wishes of the concerned State Governments on number of times. Confrontation between the Centre and the States had become quite sharp during the said period as the same party was not in power at the Centre and in most of the States. It was alleged by the State Governments that the unilateral deployment of the central armed police forces in the states by the Union Government constituted a serious interference in States affairs. On the other hand the Central Government also asserted its authority to deploy its armed force even without consulting the States. Thus, during the period 1968-1971, the Central Government could make use of its armed police forces even without the consent of the States on several occasions. This resulted in enhancing the administrative control of the central Government on the States with respect to maintenance of law and order.

However, after 1971 when the political situation had changed, the armed police forces of the Central Government

were made available to the States at their request. This however, did not undermine the authority of the Central Government to exercise its administrative control on the States, because even when the armed police forces of the Central Government are sent in accordance with the wishes of the concerned State Governments, the former can still exercise its discretion with regard to the strength of the Force to be deployed and its subsequent withdrawal.

Latest Position:

At this point it is desirable to analyse the provisions that have been added in the Constitution by the Forty-two Amendment Act with regard to deployment of armed forces of the Central Government in the States for maintaining law and order.

So far, lot of controversy arose with respect to constitutionality of the Central Government's right to unilaterally deploy its armed forces in the States on its own initiative. It was assumed that as 'Public Order' is a state subject, it is entirely left to the discretion of the State Government to decide as to whether or not any other armed force of the Union, e.g., the Central Reserve Police Force, the Border Security Force etc. should be called in aid of the civil power, implying thereby that this cannot be done without the consent of the State Government for what is the meaning of 'in aid of the civil power'

if the civil power does not want the aid. It is only when the civil power wants aid, can this aid be sent. However, the Forty-two Amendment Act seeks to clarify the position of the Central Government with respect to deployment of its armed forces in the States for maintaining law and order. Clause 43 of the Act reads as follows:

43. After Article 257 of the Constitution, the following Article shall be inserted namely;

"257A(1). The Government of India may deploy any armed force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any state.

(2) Any armed force or other force or any contingent or unit thereof deployed under clause (1) in any State shall act in accordance with such directions as the Government of India may issue and shall not, save as otherwise provided in such directions, be subject to the superintendence or control of the State Government or any officer or authority subordinate to the State Government.

(3) Parliament may, by law, specify the powers, functions, privileges and liabilities of the members of any force or any contingent or unit thereof deployed under clause (1) during the period of such deployment".

So far the constitution of India had not given explicit power to the Central Government to deploy its armed forces in the States on its own initiative. That is why so much controversy arose with regard to the right of Central Govt. to unilaterally deploy its armed forces in the States. However, under the forty-two Amendment Act, clause (1) of Article 257A) gives explicit power to the Central Government to deploy any of its armed forces in the States. It is further

mentioned that these forces shall be deployed 'in any grave situation of law and order in any state'. Whether the situation is grave or not shall obviously be decided by the Central Government. Clause (2) of Article 257(A) further strengthens the position of the Central Government, since it is clearly mentioned in this clause that these forces shall remain subject to the jurisdiction of the Central Government during their period of deployment and the State Government or any authority or officer subordinate to it shall not have any control on these forces unless specifically provided in the directions given to these forces by the Central Government. This would certainly enhance the administrative control of the Centre on the States during the period of deployment of these forces. Under Article 257(A) Clause (3) of this Act, Parliament has been empowered to make law relating to the powers, functions and privileges of the members of these forces during the period of their deployment.

Thus, the Forty-two Amendment Act, would further extend the scope of the administrative power of the Central Government with regard to maintenance of law and order in the States.

CONCLUSION

"The experiment with federalism started at a time when the economics of large scale industrialization and the politics of welfare state ideal had not been interwoven into the texture of the Constitution"¹. The industrial revolution and the emergence of the welfare state ideal have altered the environment of federalism.

The traditional concept of federalism as 'a method of dividing powers so that the general and regional Governments are each within a sphere, coordinate and independent' has undergone a serious transformation in the wake of various social and economic forces. One of the important tendencies that has emerged in every federation today is the tendency towards centralization.

The federal structure as embodied in the Constitution of India clearly reflects this trend towards centralization. "Centralization is a compulsion as revealed through world experience, and the Constitution of India has followed it"². In creating a strong Centre the framers of the Constitution were influenced by several factors.

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1. RAY (AJMAL), Inter Governmental Relations in India, Bombay, Asia Publishing House, 1966, p. 45.
 2. ibid, p. 19

The Constitution of India though, establishes a strong Centre, at the same time it assigns a substantial number of powers to the constituent units which can be exercised by the latter on their own. However, the operational dynamics of the Indian Constitution reveals that the strong Centre has become a paramount Centre under the influence of the operation of a variety of factors. Though, the trend towards centralization had already started emerging after the inception of planning in India, nevertheless, the magnitude and the extent of this centralization has become more sharp after the third Plan period.

The present study has sought to examine this trend towards centralization in the sphere of finance and in the sphere of administration of law and order.

An examination of the financial provisions as envisaged in the Constitution clearly reflects the dominance of the Central Government, since the latter has been assigned more lucrative sources of revenue while the resources of the State Governments are relatively less elastic. Yet the Constitution has tried to minimize the financial imbalance by incorporating the provisions with regard to devolution of taxes and grants to the States on the recommendations of a Statutory body i.e. Finance Commission created within the framework of the Constitution. However, in actual practice it is seen that the role of the Finance Commission has been

rendered less effective by the extra constitutional centralized agency i.e., the Planning Commission. The present study shows that under the impact of planning the Central Government has emerged out to be very dominant. The present study shows that the States have remained dependent more on the discretionary transfers by the Central Government on the recommendations of Planning Commission than on the statutory transfers recommended by the Finance Commission. This extent of dependency has become more vigorous especially after the Third Plan period. The analysis in this respect undertaken in the present study makes it quite evident that the amount of discretionary grants and loans transferred to States has increased tremendously after the Third Plan period and has virtually overshadowed the amount of statutory transfers. This tendency has become more conspicuous during the fourth Plan period.

Thus, by providing large amount of discretionary grants and loans to States, the Central Government has been able to influence priorities in the State sectors of the Plan to a substantial extent. This trend towards financial centralization has helped in accentuating the overall control of the Central Government on States. Therefore, it is desired that in order to reduce the dependency of the States at the 'discretionary mercy' of the Central Government, the role of the Finance Commission is needed to be made more vital and effective. At the same time, States should also endeavour to mobilise more and more resources on their own.

Tendency towards increasing centralization can be discerned not only in the financial sphere but it is equally evident in the sphere of administration in the operational dynamics of Indian federalism.

Though, there are several coordinating mechanisms both constitutional and extra-constitutional, operating in Indian federation to promote coordination between the Centre and the States and amongst the States themselves, nevertheless, the actual working of these formal and informal coordinating bodies has shown that through these bodies the Central Government has come to exercise its supremacy and influence on the State Governments in adopting uniform policies. An examination of the working of these agencies undertaken in the present study shows that through these agencies the Central Government has been able to exercise its mind in influencing the policies which are of exclusive concern of the States. The influential role of the Central Government in promoting regional coordination has been achieved more due to the dominance of a single political party at the Centre and in most of the States.

Maintenance of law and order is an important aspect of the administrative relations between the Centre and the States in Indian federalism. The Constitution has assigned the duty to maintain law and order to the States but in actual practice it is seen that even in this sphere the Central Government can exercise its control and influence to a substantial extent.

The present study shows that the Central Government has built up a considerable machinery to administer law and order in the States. The analysis of the various armed police organisations of the Central Government as undertaken in the present study shows that these forces have expanded rapidly during the period 1965-1975. As a matter of fact some of these forces came into existence in this period itself. Apart from this, it is also clear from the present study that these forces have been deployed quite frequently by the Central Government for maintaining law and order in the States during the period 1965-1975. Here it is to be noticed that during the period 1968-1971 these forces were deployed by the Central Government even against the expressed wishes of the concerned state Governments on several occasions. This certainly resulted in enhancement of the Central Government's administrative control on the States. The position of the Central Government with regard to deployment of its armed police forces in the States for maintaining law and order has been further strengthened by the recently passed Forty-two Amendment Act. So far these armed police forces of the Central Government used to remain subject to the jurisdiction of the concerned State Government during the period of deployment. But under the Forty-^{second}~~two~~ Amendment Act they will remain subject to the control and jurisdiction of the Central Govt. during the period of such deployment. Thus, this would further

increase the administrative control of the Centre on the States.

Thus, it can be finally concluded that the trend towards centralization has become more manifest in the sphere of finance and law and order in the last ten years. Although, the Constitutional provisions have tended to establish the dominance of the Central Government nevertheless, this dominance is reflected more significantly in the operational dynamics of Indian federalism, facilitated by several extra constitutional devices. The actual working of Indian federalism reveals that the trend towards centralisation is increasing constantly, but it has increased more significantly during the last ten years as shown in the present study. Therefore, what is required is that this trend has to be minimized if the federal equilibrium is to be maintained.

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