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TARIFF POLICY IN INDIA *

by

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Tariff Policy in India is not an altogether new and enchanting subject, but it has acquired a special significance in the context of the economic development in our country. It has acquired topicality once again owing to the appointment of the second Fiscal Commission and the recent publication of its report. There is still another reason for reviving our interest in the efficacy of tariffs. The inter-war transformations in the pattern of world trade culminating in the establishment of the International Trade Organization have given a new orientation to the purpose and scope of Fiscal Policy. Not less important has been the recent emphasis on economic planning. It has effected a fundamental change in the approach to tariff protection. It is now a problem of dovetailing tariff measures successfully in a scheme of planned economy. For these reasons I consider it capable of providing sufficient food for thought.

I propose to commence with a consideration of the place of tariffs in the present dispensation of economic thought and policy. It must be admitted that its role has been one of relative unimportance for the past two decades. Its importance began to wane during the inter-war period owing to the confusion in world trade brought about by the Great Depression. Other measures, perhaps more potent, were pressed into service, as the new developments warranted drastic results. There has also been a paucity of literature on tariffs during this period. In other words, the academic background underwent little change. It is obvious that the quantum of thought devoted to economic problems is always in proportion to their practical importance. Tariffs ceased to be a live problem during the inter-war period, as their efficacy in practice was considerably reduced.

Fortunately, however, there have been a few important papers published by eminent economists on the subject. They have thrown

* Special lectures delivered at the Annamalai University, 1951.

fresh light and mark a significant departure from the teachings of Free Traders. The approach is different and their conclusions are favourable to the adoption of a policy of protection. The main thesis of their contributions is that though free trade has been shown to be beneficial to the universe as a whole, it has never been proved to be the best policy also for a single country. By adopting the welfare approach it has been pointed out that community indifference curves may be taken to serve as a standard of reference against which we can compare the national welfare to be gained from various trade policies. A tariff imposing country should always try to maximise the welfare of the country. It is suggested that a suitable tariff will always improve national welfare if the foreigner's reciprocal demand has unit or less than unit elasticity. In no case will free trade be better than protection short of the foreigner's reciprocal demand curve becoming infinitely elastic. It has been proved that an optimum tariff will bring the trading point to a higher community indifference curve. The terms of trade argument is regarded as a rough and ready way of presenting the welfare argument. If the imposition of a tariff affects the terms of trade very much, that is a sign of the foreigner's reciprocal demand not being very elastic. Finally, they come to the conclusion that to extend public assistance to infant industry is economically fair and proper provided it does no more than equate private to social marginal productivity.

From a practical standpoint the place of tariffs is at present severely restricted. In the first place, it has to fit in with other measures of assistance and control. Tariff measures cannot by themselves yield the desired results as in a free private enterprise economy. The operation of the economy is now fettered with several restrictions and has to adjust itself to a variety of scarcities. Scarcities have given rise to controls and unless they are suitably adjusted, tariff measures would be ineffective. Therefore, in prescribing a tariff policy it is imperative to take note of the degree of relaxation of controls that is feasible in view of the short supply of raw materials and capital goods. Besides, a tariff policy has also to be reconciled now with a changed international economic policy. Since the circulation of the American Proposals there is a growing conviction that restrictions on foreign trade should cease to exist. This is as a reaction to the severe restrictions that were imposed after the Great Depression. Tariff restrictions are no exception to it and so in shaping policy reconciliation and compromise are inevitable.

At the same time the responsibilities that have devolved on tariff policy have increased at present as compared with a few decades ago. It has to sustain, if it can, a reoriented economic policy. Internal economic policy is being envisaged more on the lines of a planned economy. Tariff measures are ideally suited to aid a free enterprise economy, as their greatest virtue is to work through the price mechanism. In other words, it is a conformable type of intervention in a free economy. It is therefore difficult to conceive how tariff protection by itself could sustain a planned economy. However, if it has to share the responsibility its sphere has to be carefully defined. Still, it must be admitted that the scope and effectiveness of tariffs are extremely limited in the present context of national and international economic policies. But exactly at such a juncture national requirements have grown in volume and importance. Nations are aiming at higher standards of life and to sustain them they plan for more complicated economic structures. Backward economies aspire to lift themselves to higher levels. Such ideals are beyond the reach of fiscal policy. While the aims and targets were simple and few, tariff measures acquitted themselves fairly well. But with the present change in outlook their place is relatively less important. At the same time, the stage is not yet reached when they could be relinquished. So long as the private sector, operated on the basis of free private enterprise, exists in a planned economy, tariff aid is of considerable importance particularly to undeveloped countries. While therefore the scope and efficacy of tariffs are reduced, their implementation has become more difficult. There can be no generalisation on the nature of the policy; it has to be defined in terms of each country's position and needs. In the Indian context, a considerable amount of adaptation is necessary to suit national requirements and international commitments.

In tracing the evolution of tariff policy in India, the changes in the Indian approach to it would be an interesting study. In early days there was a reluctance to adopt tariff protection as a policy. It has to be attributed not only to the sway of the free trade doctrine but also to a limited vision of the future. When exigencies of circumstances necessitated the increase in import duties, there was an indifference to their possible effects on the Indian economy. In rare cases the effects were even neutralised. But soon agitation commenced among the enlightened public and it culminated in the demand for fiscal autonomy. But the acceptance of the Fiscal Autonomy Convention was more a moral victory than an economic benefit. It was not put to the use for which it was contemplated either because its full potentialities were not realised or because the economic climate was not yet favourable for its implementation. The privilege was used more as a bulwark against foreign competition than as an instrument of economic development. The outlook was narrow and referred only to the short-term. During the interwar period there was a guarded use of tariffs to effect a manageable change in the complexion of the economy. There were two reasons for this attitude. In the first place, the authorities were consumer conscious and did not want the burden of protection to weigh heavily on the people. Secondly, the revenue needs of the State were an important consideration. Besides, there was no desire to bring about any radical change in the economic structure.

During the second World War the attitude towards tariffs was one of relative indifference because of their ineffectiveness under war-time conditions. The *status quo* was maintained even though they were virtually inoperative. But still there was no loss of faith in the ultimate potentialities of tariff protection. Fears of post-war conditions actuated a desire to keep the policy warm for later use. Even when the war was in progress, post-war protection was promised to certain undertakings. After the war, the old *status quo* was revived with of course a slight liberalisation of principles. But the economic demands made on the State were too great for the old tariff machinery to bear. A time was reached when a redefinition of the nature and scope of the policy became necessary. Hence it has once again been defined for the future.

Tariff Measures and Policy: Taking the Tariff Measures and Tariff Policy in India for a detailed study, it may be noticed that in the beginning there was a series of unco-ordinated tariff measures till the report of the first Fiscal Commission was published. During this period there was a drift from free trade to unmeditated protection. There was a definition of policy only after the first Fiscal Commission reported. It enunciated the policy of Discriminating Protection and laid down a triple formula for the selection of industries. The first among the principles is that the industry claiming protection should have the necessary natural advantages in the shape of raw materials and power within the country. Secondly, it must be convinced that the industry is incapable of developing adequately without protection. Lastly, the industry must be able to stand eventually without protection. A few supplementary principles were also laid down, the chief among them being that no new industry can claim protection and that industries of national importance should receive special consideration.

The policy in its operation was defective both in principle and in administration. The triple formula has been extremely restrictive and it has been applied with rigidity. During the two decades of its operation the record of its achievement has been meagre. To some extent the unfavourable economic conditions during the period have been partly responsible for the inadequate results, but the hampering effect of the policy has been the main cause of the slow progress of economic expansion. It was a period of economic instability and there was also a dumping of goods on a considerable scale from abroad owing to the excess capacity created in the European countries during the first World War.

The protection that was actually granted in India was either to neutralise the unfair conditions prevailing abroad or as a countervailing measure against dumping or exchange depreciation. Therefore, though the intention of the Fiscal Commission was to grant developmental protection, what was available was actually of the safeguarding variety. In the administration of the policy, the Government manifested a greater rigidity in the applicaton of the principles than even the Tariff Board. In the case of two industries, namely glass and worsted, the absence of some of the raw materials in the country stood in the way of granting protection. But though the Tariff Board waived this consideration and recommended protection in view of their importance in other respects, the Government did not accept the recommendations and refused protection on the ground that they did not fully conform to the triple formula laid down by the Fiscal Commission.

The approach of the first Fiscal Commission was extremely empirical in character. The first condition regarding raw materials is one that resolves itself ultimately to costs of production. Therefore an examination of costs would have been a more scientific approach than a mere description of natural advantages. The second condition is an explanation of the first and hence has no claim to stand as an independent criterion. In respect of the third condition, it is very difficult for any Tariff Board to forecast whether an industry would be able to stand eventually on its own legs without protection. Beyond an intelligent estimate of possibilities a definite statement is unreasonable to expect.

The Tariff Boards in India also took a static view of the course of industrial development. Enough attention has not been devoted by them to the ramifications of an industry under review. Unless the mutually dependent parts of an industry are also included, new lines of production are apt to be neglected. A dynamic view of the economic structure would offer incentives for the growth of allied branches while protecting the existing ones. Another unfortunate feature of the policy was the exclusion of new industries from the scope of the protective scheme. If the potential industry conformed to the triple formula there should have been logically no objection in extending to it the same treatment that would be given to those that were in an embryonic condition. Thus the genesis of several useful industries in the country was prevented.

The stipulation that industries of national importance should receive consideration has hardly been applied. There has also been an overcautious application of the policy of protection owing to the over-riding consideration that the revenue needs of the country ought not to be jeopardized. On the administrative side the procedure has been very dilatory and vexatious.

The tariff machinery created in India had a few serious defects. While the Fiscal Commission desired a statutory and permanent body to be created, the Government appointed the Board on an executive order and on a temporary basis for fear that a rival authority may otherwise be created. The tariff boards were therefore *ad hoc* bodies with no continuity of policy. They had no power of initiating enquiry and as such had no continuous work. Applications for protection were made to the Government and only a few of them were referred to the Tariff Board; the others being rejected arbitrarily. They could have had the privilege of at least being heard and enquired into by an expert body like the Tariff Board. The Tariff Boards have had no power to summon witnesses and so have had to do without the evidence of representatives of important concerns though essential for purposes of a full enquiry. Finally, the delay in legislation on several occasions has been unjustifiable. Hence both in principle and in administrative methods the tariff policy has been extremely defective.

In spite of such limitations discriminating protection has not been without some tangible results. In the light of the actual development of industries in the country, it cannot be denied that the progress attained is by no means inconsiderable. There were several unfavourable circumstances during the period; the only signal factor aiding development being tariff protection. The growth of industries thus achieved has enabled the utilization of available raw materials in the country. Private enterprise received the stimulus to develop in those directions. Employment increased considerably, contributing to national prosperity.

A comparison of protected and unprotected groups of industries in respect of growth of employment during the period throws some useful light on the accelerative influence of the policy of protection. The total employment in the group of protected industries was about 580 thousand in the year 1923 and it increased to about 881 thousand by 1937. There was thus an increase of 46·8 per cent in employment among the protected industries by 1937. During the same period, the increase in the unprotected groups of industries was only 23·6 per cent. The number of persons employed in industries other than those that were protected rose from about 870 thousand in 1923 to 1,051 thousand by 1937. Taking the two groups together there was an increase of 33·2 per cent in employment by 1937 as compared with 1923. These percentages are illustrative of the acceleration in employment due to protection. The increase in the protected group is double the increase in the unprotected group. Besides, there has also been an enormous increase in secondary employment though it is difficult to calculate it. However, there has been a perceptible difference between the growth of the protected and unprotected groups of industries. Apart from the increase in industrial population there have also been a few structural developments emanating from the shelter of protection. Indian industry has been insensitive to depression; a characteristic of considerable importance during the Great Depression. Indian industry also manifested greater stability and diversity in production as a consequence of the tariff policy.

Still tariff policy was not visualised as an instrument of general economic development but was regarded merely as a means to enable particular industries to withstand competition. Tariff Board enquiries were made only when individual industries were in distress. There was neither a comprehensive scheme of development nor a bold approach to implement it. If there was a scheme, the initiative for enquiry would have come from the State instead of from private industrialists. Besides, the industrial pattern of the country was not conceived as an integrated structure, because several essential parts were neglected. It was not realised that important links should be strengthened if the industrial structure as a whole is to develop on healthy lines.

World Trade Relations: At this point a slight digression may be necessary to notice the changes in the complexion of trade relations in the inter-war period. It would serve as a background to appreciate the attitude towards fiscal policy in the inter-war period. During the uneasy thirties there was a severe contraction of world trade and drastic changes had to be effected in the sphere of foreign trade. After the Great Depression there was a disorganization of markets with falling prices and growing unemployment. The nations intensified economic control, as they were unable to restore earlier trade relationships. This tended towards increased self-sufficiency and bilateralism in trade. The normal adjustments on the basis of the price economy were arrested and gave place to a closer economic attachment between European countries and their colonies. There was an increase in inter-Imperial trade ; the United Kingdom trading with the Commonwealth and the Sterling bloc. Germany applied political pressure on smaller States.

The changes were thus brought about by government measures ; and vested interests developed on the new orientation of trade. With the formation of economic groups of countries there were clear signs of a disintegration of world trade. Countries detached themselves from each other and disorganized the multilateral trading system which was so essential for an efficient utilization of the world resources. These developments in the inter-war period were caused not only by the Great Depression but also by other equally powerful forces which synchronized with it. The Hawley-Smoot Tariff of the United States of America which was passed into law in 1930 was the highest in the history of that country and it was the initial factor in the disintegration of trade relationships. Subsequently, the currency collapse that commenced in 1931 with the depreciation of the Sterling demoralised the world trading relationships still further. Among the predisposing causes the most important were the profound maladjustments of foreign trade intiated during the first World War. They revealed themselves in the inter-war period.

Among the reasons for this abnormal development the maintenance of unsuitable parities by certain countries like Germany was one of the major factors. It was also a period of abnormal capital movements which the usual trade machinery was unable to bear. The Depression also created a natural anxiety among nations to maintain employment, even if it were to be by means of a reduction in the volume of trade. Among the Axis powers the preparation for a war gave a political flavour to their trade policy. Selected imports to build up emergency stocks for war purposes was a device which ran counter to any attempts for salvaging the world trading system. The weapons forged for the

purpose were quotas, preferences and controls pertaining to exchange, capital and currency. As these weapons were pressed into service the volume of trade in the post-depression period never attained the level of 1929. Therefore, during the inter-war period commercial policy acquired a political significance and was considered as an independent and distinct problem. It was never realised that commercial policy was only an aspect of the general economic policy of a country.

During the second World War there was a virtual suspension of the influence of tariffs. The war accentuated and distorted the world trade pattern still further and the chances of re-establishment of the old pattern were reduced. A control over foreign trade was being exercised for war purposes. There was a shortage of shipping space and a scarcity of exportable commodities. The capital equipment in the country was strained for want of maintenance and replacement. High-cost production was the order of the day owing to maximum use of capital equipment, high wages and improvised methods of production. These have left a legacy of inflation which has not yet exhausted itself. It is out of the emotions and ideas of this period that the Atlantic Charter and the Mutual Aid Agreement took shape. The chief objective of these historic documents was that nations should not revert to post-depression instruments of control over foreign trade. Another preoccupation was that effective demand should be maintained through a free international exchange of commodities.

There has no doubt been an appreciation of the new position by the State in India, but there has been a reluctance to give up tariffs as an instrument of aid in the struggle for reorientation. Even as the war was in progress a promise of post-war protection was made to certain types of industries. When the war ended the Interim Tariff Board was appointed. In their Resolution of November 3, 1945, the Government of India announced the constitution of a Tariff Board to enquire into the claims for protection of industries started during the war period.

There were three important factors influencing the appointment of this Board. In the first place, the Government gave an assurance in 1940 that specified industries promoted with their direct encouragement during war time will be offered protection to withstand unfair competition. Secondly, the broad outlines of the future policy of the Government were indicated in the second Report of the Reconstruction Committee of Council. It was made clear in that Report that it would be in the interest of the country to continue the policy of protection by liberalising the principles governing the selection of industries. Thirdly, this idea was further reinforced by Government in their Statement of Industrial Policy in April 1945. This statement amplified the issue further by making a distinction between the formulation of the future tariff policy of the country and an investigation of the claims of industries started during the war period. Therefore pending the enunciation of a long-range policy, the Government appointed an Interim Tariff Board as a short-term measure to enquire into the claims of industries started during the war period. Thus the commitment of the Government in 1940, the subsequent elaboration of the future tariff policy by the Reconstruction Committee of Council and the final statement of Government policy in 1945 were together responsible for the constitution of the post-war Tariff Board.

Simultaneously there was a relaxation of the conditions governing the grant of protection. The triple formula of the first Fiscal Commission regarding the choice of industries for protection was not reiterated by the Government. Only two important conditions were laid down for the guidance of the Board, namely that the industry that is established should be conducted on sound business lines and that the national or economic advantages should be favourable for its ultimate development without State assistance. Emphasis was also placed on the actual or probable cost of the industry based on its economic advantages. An important departure in policy in this respect is the alternative provided to the existence of natural resources in the shape of economic advantages. Unlike the first condition of the Fiscal Commission it is more scientific to investigate the economic advantages or the factor equipment of an industry for granting protection. In other words, even if some of the raw materials are not available in the country, an industry may be entitled to protection on the strength of its other economic advantages. Further, the national importance of an industry was to be given due weight so that it might outweigh any difficiencies in respect of economic advantages. So what was till then an additional condition and a condition that was hardly considered was raised to the status of a basic principle. Thus the conditions of protection were liberalised when the Interim Tariff Board was appointed.

Among the war-time industries seeking protection a distinction has been made between those which started voluntarily but helped to sustain the national economy and those which were started under the direction of the Government having been considered

essential for war purposes. The claims of both of them have been investigated by the present Tariff Board. In the first category are included the non-ferrous metals, grinding wheels, caustic soda and bleaching powder, sodium theosulphate, phosphates and phosphoric acid, butter colour, aerated water colour, rubber manufactures, fire hose, wood screws and steel hoops for baling. Among the latter group of industries which come under the Government Announcement of 1940 are bichromates, steel pipes upto a bore of 4 inches, aluminium, calcium chloride, calcium carbide and starch.

The Interim Tariff Board conducted 90 enquiries within a period of five years as compared with 51 enquiries conducted between 1923 and 1939. It recommended protection to about 35 articles, the chief among them being Alloy steels and special steels, Aluminium, Antimony, Artificial Silk, Batteries, Bicycles, Belting, Calcium Chloride, Cocoa Powder and Chocolate, Cotton Textile Machinery, etc. They have rejected the claim for protection of some of the industries like butter colour. It is equally important to notice the opinion of the Tariff Board regarding the continuance of protection to some of the older industries. The steel industry at the enquiry in 1947 did not press for the continuance of protection and it was consequently withdrawn. The steel industry had the benefit of protection for 23 years and has justified the protection granted to it. There is no evidence to show that the extent of protection received was more than what was needed. The Paper Industry received protection in 1925 and it was continued during the war period under the Protective Duties Continuation Act. In 1947 protection was withdrawn on the recommendation of the Board, the industry having enjoyed it for over 22 years. The Cotton Textile Industry received protection in 1927 and it was withdrawn in 1947. It had tariff protection in some form or other for about 23 years. In spite of the high tariff wall, the industry was struggling to maintain production. The war gave a respite but there was no replacement of plant or rationalisation of industry. The efficiency of labour and quality of management did not improve. The Sugar Industry had protection in all for about 12 years. It was withdrawn in 1950 because there was no improvement in overall efficiency to bring down the cost of production. There has been no satisfactory utilization of by-products. It was also felt that the working of the Sugar Syndicate was not in the best interests of the industry. In the case of the Sericulture Industry the Board realised that protection by itself would not be sufficient to enable the industry to reorganise itself. After 17 years of protection the industry required three times the rate of protection recommended by the first Board.

Thus the career of the Interim Tariff Board has been eventful in certain respects. It had to function under a mixture of influences, such as scarcity of commodities, adverse trade balances, direct methods of control and fears of nationalization. It has acquitted itself fairly well and done what was expected of it. But a redefinition of the fundamentals of the policy of protection was long overdue. While far-reaching changes had taken place in national and international economic outlook, the old notions of tariff protection continued to influence policy. Consequently the Government announced the appointment of a new Fiscal Commission.

Second Fiscal Commission, 1949-50: The terms of reference of the new Commission were relatively wider. It was asked to examine the working of the policy since 1922. It had also to suggest the future policy regarding protection and the obligations of the protected industries. The machinery required to implement the policy had also to be indicated. Other matters having a direct bearing on their recommendations were also to be within their purview. Finally, the short and long term issues of the commitments under the International Trade Organization were also to be considered by the Commission.

But the economic climate had undergone a significant change since the first Commission reported. There has been a fundamental shift in thought on the subject of protection in relation to a country's industrial development. In other words, there is a shift of emphasis from the negative idea of safeguards to the positive conception of a full utilization of resources. Therefore the future fiscal policy has to be integrally related to the fundamental economic objectives. Policy is to be judged by its effects in the broad context of economic development in a country. It should not only foster particular branches but induce a change in the demographic and industrial structure to raise the level of productivity. The ultimate test being national welfare, the cost of protection should be considered a social cost and ought to be commensurate with maximum social advantage. Hence, while the new Commission had the advantage of the experience of old policy, it has had to function in an entirely new atmosphere.

It was not without critics about industrialisation and tariff protection. They have found fault with the plans of industrial

development on the ground that they appear to aim at self-sufficiency and ultimate autarchy. This was the view held by 'Capital' in its issue of 7th June 1945. But the plans aimed at expansion of production and employment, objectives which are internationally accepted. Next, it is important to note that while trade may be regulated the volume of it is likely to expand. Thus it has never been the objective to attain complete self-sufficiency. Similarly, the 'Eastern Economist' of 9th March 1945 pointed out that protection has no relevance to planning. But even planning requires selection on some principle; otherwise the social cost of industrialization would be high. Besides, tariffs are necessary to regulate the private sector of the economy. It is obvious therefore that not only the outlook had changed but there was also a certain amount of hostile attitude towards fiscal measures.

The economic climate has also undergone a change owing to a difference in the academic approach towards problems of employment and national income. Full employment has become the universal target among all countries. It came to be realised that full employment is not automatically attained in a capitalistic economy as was believed earlier. Effective demand had to be increased by public expenditure in order to employ all available resources in a country. The implementation of this policy consisted in the adoption of three measures, either individually or in combination. They are deficit spending, encouragement of private investment and redistributive taxation. The acceptance of the new thesis has meant a change in academic approach to economic policy. Balanced budgets are no longer considered sacred and redistributive taxation has acquired an economic justification in addition to the moral defence.

There has also been a disturbance of the International Economic Balance. The old pattern of the trading relations have disappeared with structural changes in the internal economies of the nations. The restoration of the original balance or the establishment of a new one requires far-reaching structural changes which are not within the competence of tariff measures. Further, the envisaged commitments in international relations deprives individual nations of the freedom to effect drastic changes in the internal economic structure. While the international commitments are inevitable and desirable, the individualistic approach through tariff protection is irreconcilable with them. Therefore it is difficult for nations to be parochial. A wider horizon of thought has become a compelling necessity.

A few secular factors have also influenced the economic climate. While a reversion to peace economy has not been attained, political developments have worsened the economic situation. Independence, Partition and threats of more wars have not only physically dismembered the Indian economy but have also distorted economic judgement. A fiscal policy conceived on old lines may be out of tune in an economic climate so radically different in nature.

Difference in Approach :—The second Fiscal Commission therefore has made an entirely different approach to the problem. The environmental influence has exerted itself on their judgement. The recommendations of the Commission are a reflection of the needs of the time. So neither the approach of the two Commissions nor their recommendations are directly comparable. They belong to different economic eras. While the new Commission has had the benefit of the experience with the old policy, it has had to encounter the difficulties inherent in a period of rebuilding. The emphasis that has been placed by the Commission on the necessity of an overall economic plan is characteristic of a transitional period. Rationalisation of agriculture and what is more agricultural protection are novel features of the recommendations in the light of past experience. But once again it is the critical shortage of food produce in the country which has exercised an influence on their judgement.

It is not surprising that the Commission should recommend a preference of labour intensive to capital intensive forms of economic activity and indicate the need for the development of small-scale industries. The lack of capital and the fall in the rate of capital formation in the country have toned down the enthusiasm for the establishment of heavy industries. Another preoccupation at present is the balance of payments position and it is obvious therefore that the Commission should desire the focusing of the economic structure towards export targets. In fine, it is an interesting psychological study to relate the recommendations of the Commission with the circumstances of the period. Policy is generally shaped by the environment and the economic climate of the period.

The Commission lays emphasis on the fundamental aims which economic policy in India should have in view. The most important among them is the avoidance of unemployment or under-employment through the achievement and maintenance in each country of useful employment opportunities and a growing volume of production and effective demand. An efficient utilisation of natural resources is another important aim in an under-developed country. Thirdly, the country has to aim at a progressive increase in the standards of productivity through the offer of incentives to enterprise. Agricultural development on scientific lines is a great necessity for India. Similarly, small-scale and cottage industries have to be encouraged and fostered. Then a mixed economy ought to be the aim in developing large-scale industrialisation. Finally, the Commission has emphasised that there should be a diversified economy to enable the population to lead a fuller and a richer life.

The attainment of such aims is not easy in the light of the present economic position in the country. No doubt increasing attention is being paid to the development of natural resources and there is a reduced dependence on foreign sources for consumption articles, but still the overall picture is not bright. Agriculture has remained stagnant ; with little increase in yield and little change in character. There has been a growth of population but with no change in occupational pattern. The market for industrial products is restricted. India has been losing its share in world trade. The imports of food, cotton and jute have been overshadowing the foreign trade position. Foreign investments have dried up since 1930 and the capital resources of the country is more inclined to be commercial than industrial. Deficiencies still exist in several sectors of our economy. To elevate such a subnormal economy is a task which is not within reach of any isolated measure.

General Features of Policy :—An outstanding feature of the work of the Commission is the comprehensiveness of its outlook. The economy as a whole is viewed for protective purposes in place of the old attitude of concentrating attention on particular industries. The Commission has also shown its awareness of the fact that tariff protection is not the only device for the acceleration of economic development. In other words, the limitations of tariff measures in the present context are indicated. What is even more laudable is the emphasis of the Commission on the fact that the grant of protection does not absolve the State of all responsibility. It is recommended that there ought to be a considerable amount of after-care of protected industries. This aspect of the problem had escaped the attention of previous authorities. The fulfilment of obligations by protected industries is also insisted upon by the Commission. There are social and economic obligations to be fulfilled by the recipients of protection in order to realise its social implications. Society pays a price in accepting protection and it has a right to assess the results and prevent the deterioration in morale.

The Commission insists on regarding tariff protection as an instrument of policy to further economic development. It has to be used in the context of planned development. The case for planning rests on the factor of scarcity and the need for balanced, efficient and economical utilisation of resources. The Commission points out that planning must influence the character of tariff making in a variety of ways. In the first place, to the extent other facilities are granted, protection ought to be reduced. In the second place, where planning aims at decentralisation it will increase competition and thus reduce the burden of protection. Planning will also influence the nature of protection through a chanelling of investments. The priorities in a plan will also serve as a guide to the tariff authorities. Finally, since planning aims at a balanced development, protection should be based on priority grouping according to the availability of internal and external economies. In fine, the Fiscal Commission has been fully aware of the necessity to dovetail tariff policy in a scheme of planning.

As a logical corollary the Commission has offered a pattern of economic development for the country. It is pointed out that the pattern of development should be such that it will fit in with the fundamental objectives of economic policy. Emphasis is laid on the basic significance of agriculture in the country's life and economy. They recommend that rationalisation of agriculture and expansion of industrialisation are closely inter-related and should be planned on a co-ordinated basis. Rationalised agriculture should aim at maximum yield and mixed farming. Agriculturists should be made to change their old-time outlook and their interest should be aroused in new knowledge and new ways of life.

In relation to a pattern of development the Commission lays much stress on the importance of small-scale and cottage industries. It is pointed out that they are not only a source of occupation but also an important element in that way of life associated with a predominantly rural occupation. There is a revealing discussion by the Commission on the question of costs of production as a criterion of choice between large and small scale methods of production. Costs are analysed into private costs and social costs. The latter are reduced in small scale and decentralised industries owing to the economy of expenditure over public utility services. The costs of social security arrangements are also proportionately lighter. In this connection, the costs and dislocations of a substantial deviation from traditional modes of living have also to be reckoned with. They indicate that when these social costs are taken up the gap between the unit cost of production in a small and a large industry is narrowed. Besides, even private costs are reduced at present owing to technological progress. Electrical motors, internal combustion engines, etc., have reduced the economic scale of production. The Commission has made a recommendation that there should be a statutory corporation for stimulating the growth of small-scale industries. They should have positive assistance in the shape of delimitation of the field of production and of markets, differential transport facilities and the use of differential excises.

With regard to the pattern of large-scale industries the Commission is of opinion that capital and know-how cannot be increased substantially to alter the scheme of industrialisation. They feel that except managerial and operative skill the other mutable factors cannot change. Free enterprise might proceed in the direction of least resistance, but since planning has to foster a different pattern they recommend a high priority to the essential defence industries and those meant for developing natural resources like water-power. Then follow Public Utility industries and the heavy key industries. In the private sector they recommend output to reach the maximum of installed capacity and an expansion upto the limits of effective demand and export market. They suggest the establishment of complementary industries to the existing ones and those for whom external economies are available. Finally, those industries that are catering to a large market have to receive adequate encouragement.

Thus the pattern, according to them, is a half-way house between the economies of advanced countries and the present rural economy in India. Too much emphasis has not been placed on heavy industries, as the importation of the required machinery would aggravate the balance of payments difficulties. They would also not yield any consumption goods immediately so that the inflationary potential in the country would gather further strength.

Principles of Protection:—In giving the fundamental principles of protection the Commission has enunciated a new concept of protection. It has explained the role of tariffs in the context of planned development. It has also laid down the principles of selection to be applied and the principles determining the scope and limits of protection. The form and methods applicable to particular cases have also been explained.

In the new policy there is a surrender of some of the old principles found difficult to apply. The insistence, for instance, on the existence of raw materials has been tempered to offer an opportunity for the development of industries which are otherwise economically sound. The Commission has also enunciated a few new principles to suit the reoriented outlook. The concept of a 'mixed economy' and the attempt to fit in the tariff policy to it are instances of the changed outlook. Filling in of certain lacuna in the old policy and the liberalisation of governing principles are the other features. The conferring of statutory powers on the Tariff Commission is bound to remove a serious lacuna under the old dispensation. The principles laid down are more definite than those governing the Interim Tariff Board. For instance, the condition that the industry should be conducted on sound business lines is vague and uncertain. They have also made a positive contribution in saying that the tariff is one of the instruments of policy to further economic development and that it ought to be related to an overall plan to prevent an unco-ordinated growth.

The first principle is that defence industries should be protected. They would be in the public sector and should always have adequate protection. Key and basic industries would entitle themselves for protection according to their inclusion in the national plan. Their inclusion in the national plan will itself entitle them to the grant of protection. In their case the Tariff Board will have only to determine the form and quantum of protection. Among the others, those having a high priority in the plan should entitle themselves for protection. Industries that are complementary or ancillary to the existing ones should receive consideration. Protection would also depend upon the economic advantages available and the prevailing costs of production in an industry. Those that are of national interest may have to be protected bearing in mind all the time that the cost of protection for the community should not be excessive. In the absence of an approved plan and consequently with no indication of priorities, the general conditions mentioned may have to be applied to all industries.

Some specific issues of policy have also been raised and answered by the Commission. The availability of raw materials in the country was an important condition hitherto. This need not hereafter be a condition precedent of protection if the industry possesses other economic advantages. Another healthy principle is that the potential export market may be taken as an indicator of comparative advantage. It may be estimated to determine the comparative advantage of the industry entitling it to protection. One of the former governing principles was that the industry should have the eventual ability to meet the whole of the domestic demand. The Commission has expressed its opinion that it should be enough if an industry could cover a sizable portion of the internal demand within a reasonable time. It was not fair to expect an industry to meet the whole of the home demand.

An important issue that was also raised by the first Fiscal Commission was about protection to raw materials and stores. The question is whether an industry supplying raw materials to other industries should be protected. The burden of it would be on those that use such materials and that would be a handicap to competitive efficiency. This may be obviated by offering compensatory protection to such industries in addition to the normal protection to which they are entitled. But similar compensatory action may not be necessary in the case of the unprotected industries. Another solution for them is to pay subsidies instead of giving tariff protection. But that would depend on the availability of resources. The compensatory action will however depend on the nature of raw material, the nature of burden, proportion of its cost to total cost, and the nature of demand for final product. The first Fiscal Commission came to a similar conclusion on this issue. It suggested as a principle that an industry should receive protection, even if it adversely affects the development of other industries, provided this results in a net economic advantage to the country.

In respect of new or embryonic industries the second Commission has marked a departure in policy in recommending that they too ought to receive protection if they are eligible. In other words, industries by virtue of being new or not yet launched are not disqualified from claiming protection. They say that in principle it is difficult to distinguish between the claims of an established and a new industry. Though there are real difficulties in planning and estimating the probable success of a new venture, still the need of assurance is great particularly for industries requiring heavy capital investment.

In the sphere of agricultural protection the second Fiscal Commission has cut new ground. It has recommended protection if national interests require it. But it has prescribed certain important conditions. The number of commodities protected ought to be kept small and the selection should depend on the importance of the raw material and the volume of employment it provides. Agricultural protection should be on an interim basis and for short periods only. It justifies protection on the understanding that agricultural improvement should be an integral part of the general economic development. The Commission would make the Tariff Board responsible for reporting on the technological improvements effected in agriculture under the shelter of protection.

The effect of internal taxation on protective measures has also been considered. The Commission is not very much in favour of the levy of central excises. Since they have a neutralising effect on tariff protection they are considered inadvisable. So except under inevitable circumstances they are not recommended. Sales tax is also a similar impediment, but they are of opinion that the objections against it are removed by the provisions in the new Constitution. The levy of cesses for research purposes is not considered objectionable. It is also suggested that the fixing of prices for raw materials used by protected industries should be done by the Central Government.

Methods and Machinery of Protection: Referring to the methods of protection the Commission is of opinion that *ad valorem* duties should have a predominant place in the scheme. Under the existing condition of rapidly fluctuating prices it is suggested that *ad valorem* duties would offer the best guarantee of protection. Specific duties may also be used when a commodity does not have many varieties and also when the value of a commodity is difficult to determine. An important recommendation of the Commission is with regard to the creation of an 'After--Care' organization at the cost of the Government. It could operate on a Development Fund to be created out of a portion of the protective revenue for payment of subsidies.

With regard to quantitative restrictions the undesirable features are indicated and it is suggested that they must be used sparingly. It is contended that they sever the connection between internal and external price levels. The opportunity they provide for government interference and their discriminatory character are also emphasised. So except to control abnormal imports they are not recommended. The place of subsidies is considered favourably. On three conditions subsidies may become payable. When domestic production is capable of meeting only a fraction of the home demand subsidies are preferable. Similarly in the case of essential raw materials subsidies may be justifiable. Finally, when only certain qualities of goods need protection the best method is to offer subsidies. A laudable suggestion made in this connection by the Commission is to combine a subsidy with a low protective duty. The yield of the protective duty may be offered as a subsidy so that no demands may be made on the general finances.

With regard to the quantum and period of protection the Commission has made certain definite recommendations. In respect of quantum the equation of domestic cost with landed cost is to be adopted as a principle. But the determination of cost has been a difficult problem. Hitherto the "Representative Unit" has been taken for the purpose, but there are no objective criteria for selecting it. Besides, cost accounts may not be maintained by all the firms. Hereafter it should be insisted upon and the Tariff Board should lay down certain principles regarding expenses. Even with regard to the Managing Agent's commission a standardized practice has to be evolved by the Tariff Board. A novel feature is the recommendation for a certain margin for prejudice against indigenous products.

As regards the period of protection the Commission is of opinion that it should not be too brief. The handicaps of local industries are to be taken into account and adequate time granted to overcome them. An important observation made by them in this context is that in undeveloped countries external economies are not generally available and consequently the period of protection should be longer. It is also suggested that the best method is to indicate the different stages in protection and the conditions to be fulfilled at each stage. The total period may be indicated subject to the compliance with the conditions laid down. These are valuable recommendations in view of the vague expectations and the irresponsible attitudes of the recipients of protection hitherto. The Commission is generally in favour of longer periods of protection, as otherwise there are no chances to modernise or rationalize the industry.

A new feature of the findings of the Commission is the insistence on the fulfilment of certain obligations by the protected industries. Protection is a burden on the consumer and a limitation on his choice. The sacrifice involved ought to be reduced to the minimum. Obligations are therefore imposed to ensure efficiency. When an industry is dominated by large producers it must be amenable to price regulation particularly when it deals in essential commodities. The scale of production ought to increase progressively according to a time schedule. Quality should conform to specifications and technological improvements should be in progress as otherwise the burden on the consumer would be stabilised. The promotion of suitable research and the training of apprentices are the other obligations. Protected industries ought not to indulge in anti-social activities. The Commission leaves it to the Tariff Board to review the position periodically and recommend continuance or withdrawal of protection.

In dealing with the nature and constitution of the Tariff Board the Commission considers the view whether the Tariff Authority could be a part of the Planning Commission. The view is rejected on the ground that it would be necessary only when the Planning Commission is responsible for the formulation and execution of the plan. But since the Planning Commission in India is only advisory and consultative it cannot incorporate the Tariff Authority in itself. Besides, as the functions of the Tariff Board are quasi-judicial, it should be independent; with of course the closest possible liaison with the Planning Commission. The Fiscal Commission therefore recommend that the Tariff Board should be an independent institution with a permanent tenure. Permanence is necessary to have consistent decisions and a continuity of policy. Further, it is recommended that it should be placed on a statutory basis by being constituted by an Act of Parliament. Finally, it is suggested that it should be called the "Tariff Commission" hereafter. It should be continuously conducting enquiries about tariffs and their general effects and making periodic reports to the Government. Their reports should contain adequate analysis and present a clear picture of the economic and social advantages of protection.

The recommendations of the Commission in respect of the constitution of the Tariff Board deserve appreciation in view of the attitude prevalent in some of the Government departments before the Fiscal Commission was set up. For instance, the Industries and Civil Supplies Department was of opinion that there was risk in the creation of a statutory authority. They feared that a statutory body may tend to constitute itself into a rival tariff making authority. But there was not much substance in the statement, as the Federal Public Service Commission, which is a statutory body, does not claim powers beyond the scope of the Statute. In Australia and Canada where statutory boards are in existence such

powers are not claimed. Besides, the Tariff Board is going to be an advisory body and will not arrogate to itself any extra powers merely because of its creation by an Act of legislature.

Appraisal of Recommendations:—Though the Fiscal Commission has made significant departures from the accepted policy of the State, still on an assessment of its findings it is doubtful whether all aspects of the problem have received adequate attention and whether all the findings are unimpeachable. In the first place, there are certain important facets of the question which have not received due recognition. Secondly, there are also a few points which have not been sufficiently emphasised and analysed. Finally, there are also certain assumptions which are of doubtful validity.

The most important facet which has hardly been noticed is the position of the Indian economy *vis a vis* the world economic pattern. Though the Commission has made a comprehensive treatment, still its outlook has been parochial in this respect. The modern outlook on economic problems transcends national boundaries. The Commission does not indicate any awareness of the influence of other economies of the world on India. Structural adjustments within the country are suggested, but similar adjustments between nations is a primordial necessity to restore and re-establish world economic balance. Structural inconsistencies between nations have been the chief motive-force in causing the balance of payments difficulties. So a permanent solution of the malaise is for the nations to agree on a scheme of dovetailing the economic structures of the nations participating in international economic relationships. This would warrant an international scrutiny of the overall economic plan which is suggested to be the pivot of future tariff policy. In other words, economic complementarity of nations is the ideal towards which the world has to gravitate. This should be done under the auspices of the United Nations Organisation. If the Fiscal Commission had considered this facet of the problem in all its fullness it could have been realised how much more limited is the scope and potency of tariff protection.

Among problems which have not been sufficiently elaborated and emphasised the most important is in respect of the pattern of economic development suggested by the Commission. This is considered a lapse particularly because the treatment is otherwise wide and not restricted to the strict confines of tariff protection. In suggesting a pattern of economic development, the Commission has confined itself to the question of priorities among industries and the division of functions between State and private enterprise. But a pattern should display the varigated scheme of industrial units and the mutual inter-relations among them. The rate of growth in each line and the manner of adjusting it with those of the others have to be indicated according to a time schedule. A pattern ought to be dynamic; otherwise the original design will get distorted in course of time owing to unregulated rates of growth among the constituents.

It may be contended that it is the Planning Commission that has to elaborate the features of the plan, but in making Fiscal Policy dependent on an overall plan, the nature and degree of protection would be in proportion to the relative rates of growth pre-determined for particular industries. It is not unlikely that among industries of equal priority there could be differences in the rates of growth. Hence the approach of the Commission in respect of a pattern to be maintained by protection has not been carried to its logical conclusions. So long as protection has to subserve a pattern it is desirable to have the pattern explained in greater detail. In this respect the Commission could have laid down certain principles, if not a formula, for the guidance of the future Tariff Commission.

Tariff Policy has no doubt been made more liberal and less narrow, but the Commission does not seem to envisage the ultimate surrender of protection. Though a necessary evil during certain phases of economic evolution, it is not expected to be a permanent feature. The Government has hitherto been particularly cautious in limiting the period of protection to individual industries and has always envisaged its ultimate withdrawal. But the new Fiscal Commission does not propose means for its ultimate surrender. It is however important to realise that hitherto industries were dealt with individually and it was therefore easy to prescribe certain criteria for the withdrawal of protection. Since the present Commission views the economy as a whole, it would certainly be more difficult to prescribe any time limit for setting free the trade between nations. But certain targets of output, efficiency and structural reorganizations could have been suggested as the final goal of a protective policy; the attainment of which should mark the occasion for a change in policy.

The place of direct methods of control, like the quota system, has not been reasonably defined. They are compared to tariffs, but their relevance in relation to an economic plan has not received fair treatment. These instruments are certainly a barrier to increased trade. So it is pointed out that they are a non-conformable type of interference which destroys the price mechanism and free enterprise. But under planning a control over foreign trade seems to be necessary to avoid frequent disruptions. The tariff method of regulation is inadequate for the purpose. Under national planning there would be a curtailment of free competitive enterprise reducing the efficacy of the price mechanism. Since the system of quotas is a half-way house between a liberal and a socialized trading system, they have to find a place in the commercial policies of democratic countries which have embarked on planning. Further, to insulate the productive plans quotas are the only means among countries which are not fully socialized. So it is not their demerits in relation to tariff that should decide the choice but the exigencies of circumstances.

With regard to the obligations imposed on protected industries, while it is laudable that it should be a condition for the continuance of protection, it is not clear, from the recommendations of the Commission, what would happen to the overall economic plan if particular industries forfeit protection for non-compliance with the obligations imposed. According to the nature of planning that is envisaged the overall plan has to be executed with the co-operation of private enterprise. If such parts of the plan which are under private operation are denied protection for some reason or other it ought to affect the entire structure of the plan if it is well co-ordinated. In other words, under planned Capitalism the relationship between the State and private enterprise is more in the nature of mutual obligations than one of unilateral rewards and punishments by the State. So there ought to be other means for making private enterprise realise the necessity for compliance with the obligations than the withdrawal of protection.

It is also a matter of doubt whether all the assumptions of the Commission are valid and tenable. One of the important assumptions is the finality of the Directive Principles and the Industrial Policy Statements of the Government of India. They are assumed to be unalterable and all suggestions about the future protective policy are focussed on them. But it is a matter for consideration whether they could be good for all time. They too may be subject to interpretation and change with more knowledge and experience. Hence probably it might have been more helpful if they had been examined by the Commission in the light of the enquiries made by them instead of merely accepting them and following them scrupulously.

There is another assumption which is even more objectionable from the standpoint of a scientific approach. It is said that when once an industry is included in the economic plan it will automatically be eligible for protection. But this need not necessarily happen and what is more if it is permitted it would not only demoralise the industry but render the Tariff Commission ineffective and superfluous even to express an opinion. As a matter of fact, some of the industries in the economic plan may be receiving help by other means than protection and they may be more appropriate for the purpose. Further, there may also be a few in the plan which may not stand in need of being sponsored by the State in any way. For instance, the Iron and Steel industry, which is one of the key industries of India, did not press for the continuance of protection and consequently protection was withdrawn in 1947. Hereafter the inclusion of it as a key industry in the economic plan should not be a compelling factor to grant protection whether such protection is claimed or it is appropriate. It would be illogical to accept such a position. Over and above the inclusion in an overall plan further tests have to be applied to each industry before protection can be granted. So the findings of the Commission are not without a few errors of omission and commission. They may have to be corrected before the recommendations are accepted by the Government. Still, the suggestions of the Commission mark an important epoch in the evolution not only of India's fiscal policy but also its economic regeneration.

International Commitments : One of the new problems that this Commission has had to face was the necessity to adapt fiscal policy to the international obligations under the Havana Charter and the General Agreement on Trade and Tariffs. The Commission was also asked to express its opinion about the ratification of the Charter. So the issues arising out of these commitments have been thoroughly examined after eliciting the opinion of the public. At the outset, the objectives of the Charter are explained. They are to increase income, demand and consumption and to foster the economic development of undeveloped areas even if it be through international investment. Nations should have equal access to markets and raw materials through reduced tariffs and by the elimination of discriminatory treatment. The general aim

ought to be to increase trade by abstaining from the use of measures which are likely to disrupt world trade. Finally, nations should try to solve international trade problems through mutual consultation. Through a few escape clauses Governmental assistance is permitted for economic development. A member nation can develop under the shelter of protection but such measures should fit in with the principles of multi-lateral trading. In other words, tariffs could be made use of for the purpose of economic development so long as it does not prejudice the ultimate attainment of multi-lateral trading. Even subsidies are permitted if they are for supporting production. Quantitative restrictions are permitted under rare circumstances when they are economically more advantageous.

In assessing the Charter, the Commission points out that though it is a uniform commercial code to which all nations have to conform, still the undeveloped countries can make use of exceptions. In the short-period quantitative restrictions are permitted and in the long-period though it may be difficult to make use of them, still it ought to be possible to prove the necessity for them. In answering certain criticisms it is explained that the relatively greater emphasis on foreign trade in the discussions leading to the Charter is obvious on account of the nature of the problem. Internal problems cannot be discussed on an international level. An assurance is given that there will be no supra-national regimentation through the International Trade Organization. Though nations may not have absolute freedom of action, the power to grant tariff concessions would still remain.

So the conclusion is arrived at that from the short-period point of view there should be no objection to the acceptance of the Charter. In the long-run it imposes certain obligations, such as the difficulties in initiating and pursuing independent policies. But the Fiscal Commission draws our attention to the fact that all international commitments encroach on national freedom; the inference being that on that account they cannot all be avoided. Three more positive reasons are given in support of the recommendations for ratifying the Charter. A warning is given that the pattern of India's foreign trade may change making the country more vulnerable to world trade. In such a circumstance membership of a world trade organization would come to the country's rescue. Secondly, it is pointed out that for an under-developed country like India it is not safe to be in isolation. Finally, the Commission assures that the Agreement is tenable only for five years and a country can withdraw if necessary after that period. On the basis of these arguments the ratification of the Charter is recommended.

In respect of the General Agreement on Trade and Tariffs, the Commission explains how it is a full-scale commercial policy code incorporating the rules of Havana. The chief advantage of the Agreement is that the participants will derive direct as well as indirect benefits, as all concessions granted between any two countries are automatically available to all the other participants. So it is recommended that India should adhere to it, as it will be to her interest even if the ratification of the charter is delayed. Of course, the acceptance is subjected to certain conditions. Concessions ought to be in the interest of the country and they should not be in respect of industries which may claim protection. The concessions should not result in an excessive loss of revenue to the State.

The views of the Fiscal Commission in respect of these international commitments are not acceptable without further inquiry into the pros and cons of the unqualified ratification. It is obvious that the Charter contains certain commitments and also a few escapes. The commitments affecting national policies are with reference to commercial policy; tariff reductions and elimination of preferences being the most important among them. Countries have also to commit themselves to reduce their invisible tariffs, such as customs formalities, internal taxes, and mixing regulations. Nations have to abandon the use of quotas and other quantitative restrictions and should use them, when permitted, on a non-discrimination basis. Restrictive business practices of cartels should be eliminated and the grant of subsidies should be restricted for the purpose of supporting production. Unfair labour conditions have to be eliminated and countries ought to commit themselves to a developmental programme for raising the standards of productivity. For attaining these ends international investment may be necessary and to encourage it, adequate security should be afforded to foreign capital.

Since the commitments are specific there are also a few escapes. Among the open escapes the most important are the power to withdraw tariff concessions if they are likely to cause serious injury to producers and the permission to use quotas and subsidies in certain circumstances. The controlled escapes refer to quota restrictions under balance of payments difficulties and for

purposes of economic development. Another escape is the relaxation of the most favoured nation condition for establishing customs unions.

Several criticisms have been levelled against the Havana Charter. It is said that the Charter is too idealistic for a practical world and that it is negative in approach. But though idealistic it is tempered at every stage by compromise and though negative it is positive in aiding the expansion of trade. It is also feared that it implies global planning tending towards the creation of a super-state. But the creation of a Super State, though very desirable in itself, is not within reach of the International Trade Organization; it not being vested with such powers. Some are sceptical about its success, as the liberal trading principles that it embodies represent, it is said, eighteenth century thought and nineteenth century practice. But the Charter hopes to rebuild those liberal trading principles on new foundation.

However the most weighty among the criticisms is that the Charter does not devote adequate attention to the disturbance in the equilibrium in balance of payments which is the central problem. It is emphasised that it is not a passing problem but one that requires the retention of restrictions for an indefinite period. As large adjustments are needed the price system correctives would be ineffective and therefore the approach through tariffs would do more harm than good. In other words, it is argued that the use of direct controls, which are outlawed by the Charter, may be necessary to effect a re-adjustment in the structure of economic life.

This is a criticism that cannot be easily refuted and it is unfortunate that the Indian Fiscal Commission has not considered this aspect of the Charter while appraising it and recommending its ratification. There can be no doubt that the Charter is ill-timed and that it does not square with existing conditions in the world. Economic conditions at present are such that nations are incapable of bearing the responsibilities of international commitments. In other words, this international scheme outruns national capacities.

There is a need for an adjustment of the internal economies of the nations to conform to international requirements. Some of the advanced countries may have to reorder their economic structure. Such positive contributions are the essence of international co-operation and it is only through such gestures that economic complementarity of nations could be reached deliberately. Further, the outlawing of quantitative restrictions has created a difficult situation for economically undeveloped countries like India. The role of direct methods of control is important till all the large structural adjustments are made.

As regards the General Agreement on Trade and Tariff, the concessions granted may not be felt by India so long as goods are in short supply. Conversely, the concessions received cannot be of much benefit to India at any time in view of the nature of her exports. So a full application of the Charter may not be feasible in the present context. The distinction made by the Fiscal Commission between the short and long periods for purposes of ratification of the Charter is not of much avail. It is the fundamental weakness of the instrument and its unsuitability to the needs of India that are pertinent. Till normal internal conditions are restored and a new external economic relationship is established, the operation of the Charter has to be kept in obeyance. Neither of these objectives could be attained by means of the Charter. It is through other measures that normal conditions could be restored. So for the present, the acceptance of the Charter could only have a moral value. The arguments put forward by the Fiscal Commission in recommending its acceptance, though sound, are not applicable, as the International Trade Organization would not be in a position to safeguard the interests of the under-developed countries. It would be more correct to depict the acceptance as harmless in the present context. Beyond that no positive contribution can be expected of it towards economic recovery. On the other hand, all the inconvenience of adapting our fiscal policy to suit the commitments in it has to be undergone. It is not a heroic act to withdraw from it after a period of five years as suggested by the Fiscal Commission. That is not doing justice either to ourselves or to the Charter. It is much better to indicate its weaknesses and defer its operation till conditions become more favourable.

The phenomenon of the disequilibrium in the balance of payments is dynamic in character because the rate of economic growth in the United States of America is higher than that of the rest of the world, so that the cleavage will get wider in course of time. It will recreate itself unless the counterbalancing factors devised are also dynamic in nature. Attempts must be made to raise the rate of economic growth in other countries in order to meet the situation. This is a long-term solution and it has to be

supported by other short-term measures for maintaining the existing standards of living through trade relations.

Since short-term measures are immediately needed they may be elaborated at the outset. There seems to be an urgent need for the creation of an International Clearing House functioning on lines similar to those followed by the United Kingdom before the war. Though not identical in all respects still the essential functoin of offsetting international balances would be done by such a Clearing House. Taking the total exports of each country to whichever country as its credit and taking the imports from anywhere as its debit the balances either way must be shown in the books of the Clearing House in terms of an accepted international money. Adjustment of such balances should be done once in three years. Till then countries with a credit balance should refrain from withdrawing them and consider them as temporary advances to debtor countries. Interest should be payable on debit balances in terms of the international money.

If the adverse balance of a country persists for a longer period than three years the country may be either made to settle the debit balance in gold or an extension of credit may be arranged through the Clearing House or a special department of it. Countries with continuous surplus balances should be made to lend them for developmental purposes through the Clearing House. The merits of this system are that lending would be internationalised, as it would be in terms of the Clearing House money and full employment could be maintained in the surplus countries. The loans may be utilised for structural adaptations which would prevent in course of time the imbalance in external trade. Of course a limit has to be imposed on import surpluses to prevent the temptation of countries to import more than their capacity to pay. Either it should be limited to a predetermined proportion of imports in a base period or it should not exceed a certain percentage of its exports. Conversely, export surpluses beyond a certain limit should automatically become available for international lending. The advantage of a mechanism like this is that particular currencies cannot become scarce as the balances will be in terms of international money. Thus the distinction between hard and soft currencies will disappear. Trade would be according to commodity needs and not canalized by the availability of foreign exchange.

Unless the disequilibrium in international payments is adjusted through some such mechanism, while the structural changes are in progress, free trade among nations, which is the objective of the Havana Charter, cannot be attained. Had the Indian Fiscal Commission examined the merits of the Charter from this standpoint it would have considered its ratification by India to be of not much importance. Though it might not have been strictly within its terms of reference, the Commission could have based their recommendation on the merits of the organization for which it has been created after a careful assessment.

The idea of a Clearing House mentioned in the preceding paragraph is not altogether new, as Lord Keynes foresaw in 1943 the necessity for such an institution. In what is popularly known as the Keynes Plan there is a proposal to establish an International Clearing Union based on International bank money called "bancor" fixed in terms of gold and accepted for the purpose of settling international balances. According to paragraph 5 of Section I of the Plan, each member State shall have assigned to it a quota which shall determine the measure of its responsibility in the management of the Union and of the right to enjoy the credit facilities provided by the Union. Member States have to take steps to correct excessive debit or credit balances. A rigid maximum was imposed in the case of debit balances. But it is open to criticism that the Plan does not provide for a compulsory investment of persistent bancor credit balances accumulating in excess of a member's quota. Section II of the Plan explains that however desirable this may be in principle, it will impose a heavy burden on the creditor countries. Unless credit balances are allowed to accumulate and are compulsorily invested, the ideal of full employment cannot be attained. It is also the only method of avoiding balance of payments difficulties and deflationary pressures. Otherwise the Clearing Union would act merely as a means to set off balances within a limited volume of transactions having no expansionist bias.

Recently Prof. Balogh has made a few valuable suggestions to solve the problem of balance of payments. He recommends the transformation of the International Monetary Fund into an International Central Bank to create purchasing power accepted as lawful reserve by all central banks. It is believed that by this means the expansionist bias of the world economy of the 19th century would be recreated. Though an ambitious and effective device, it is doubtful how far national central banks would accept interference in their activities by an international agency.

The European Payments Union recently set up by the Marshall Plan countries is for the purpose of acting as a Clearing House which will balance out surpluses and deficits, and calculate for each member its net surplus or deficit in two months. The scheme enables the grant of credits to cover any member country's net deficit with the rest of the Union. Though the dollar deficit cannot be directly solved by this scheme, it may alleviate the position by reshuffling trade within Europe. It is essentially meant to ease intra-European trade and not for increasing the tempo of world trade.

From this digression it ought to be evident that there is no general optimism about the efficacy of the International Trade Organization in the existing circumstances. It is to ascertain this fact incidentally that the Government wished the Fiscal Commission to express an opinion regarding the ratification of the Charter. In recommending its acceptance during the short-period the Commission has by-passed a consideration of the fundamental weaknesses of the Charter under the prevailing conditions. A long-range tariff policy as outlined by the Fiscal Commission cannot be of much value if it ignores the potentialities of other long-range measures meant for easing world trade. Tariffs by nature are best suited to operate in a scheme of multi-lateral trading and hence the revival of it ought to be the main preoccupation. So it would have been justifiable had the Commission devoted some more attention to the measures available for the purpose.

An Estimate of New Policy :—In making an estimate of the new tariff policy for India enunciated by the second Fiscal Commission it must however be said to their credit that the scope and limitations of tariff measures have been correctly gauged. While its potentialities are immense its limitations are also considerable. Its limitations have increased with the passage of time and the progress of events since the first Fiscal Commission reported. That is the reason for the emphasis placed by the new Commission on other supplementary measures in aid of industrial development along with tariff protection.

It is also a matter for gratification that the Commission has visualised a much wider field than hitherto in framing a suitable tariff policy. It has gone far beyond the pale of influence of tariffs in order to improve the tone of the economy. The Commission has very clearly stated that the mere imposition of protective duties, however scientifically contrived, will not by itself produce that full industrial development that we desire. One such extraneous factor that has been investigated is the development of capital resources in the country. It is pointed out that capital resources are necessary to place protection of industries in its proper setting within the framework of a purposive policy of accelerated industrial development. At present the paucity of capital is so acute that along with balance of payments it is the crux of India's short-term economic problems. In examining the hindrances to capital formation the Commission is of opinion that the fear of nationalisation is unfounded, as the Constitution provides for compensation. They agree that the high levels of taxation are prejudicial to capital formation and that the entire tax structure should be subjected to examination. They are also of opinion that the malpractices of the Managing Agencies have been a cause of the fall in the rate of capital formation. The shift in national income has reduced the margin of saving for the old investors and so the Commission has suggested that the habit of saving should be inculcated among people whose incomes have increased. They also suggest that with regard to the control of capital issues a fresh machinery must be set up to ensure useful investment.

It is estimated that the capital requirements of the country would be about Rs. 330 crores and if the internal savings that can be mobilized falls short of it the gap should be covered by foreign capital. Besides, as capital goods have to be obtained from hard currency areas, importation of foreign capital becomes necessary. It can be utilized for the projects in the public sector and for new lines of production in the private sector. The direct or the equity form is recommended where technical know-how is required, as it would ensure the adoption of efficient technique.

The Commission has also explored several other fields, such as Industrial Management, Labour Efficiency, Industrial Relations, Teritiary Production and the Pattern of Export Trade. With regard to Industrial Management they emphasise the importance of standardisation and quality control. They would make observance of approved standards obligatory particularly for export trade. In respect of labour efficiency, though they accept that the output per man-hour is not always a function of one variable, namely labour, still they feel that there is a margin for increase of efficiency even under existing conditions. So far as industrial relations are concerned it is felt that the existing schemes are meant only to settle conflicts and not for removing the causes of conflict. So unless the economy is geared to a positive plan a co-operative spirit cannot be developed. Various aspects of tertiary production are considered and several ancillary measures are suggested for improving the health of the economy.

A few valuable suggestions are made regarding the objectives of foreign trade policy. There should be a reduction in imports by an improvement of domestic cultivation and by an increase in the production of commodities having a comparative advantage. Exports of manufactured goods should be directed to markets where there is no competition. It is suggested that the final pattern of foreign trade could be reached in three stages. During the first stage large quantities of capital goods may have to be imported. In the next stage the import of consumption goods may increase and when the third stage is reached exports will increase and imports will be restricted to specialised goods. Thus it is laudable that the economic problems are broadly visualised by the Fiscal Commission and useful recommendations are made regarding several allied factors.

But still criticism has to be directed against certain features of the treatment of the problem and also certain specific recommendations of the Fiscal Commission. The chief error is that the issues are not analytically broken up and set for action so that the State could get into grips with them. The general pattern of the economy indicated is only a vague outline representing certain broad notions. None of the dynamic factors influencing an economy have been brought in and provided for in the pattern. So far as the tariff principles enunciated are concerned there does not appear to be any novelty. Beyond the acceptance of the obvious shortcomings of the principles followed hitherto there is no new principle conceived afresh by the Commission. A few principles found by experience to be difficult in practice have been surrendered. The academic and the business world have been demanding their surrender ever since the policy of discriminating protection came into operation. Among the few new principles enunciated to suit the reoriented outlook is the willingness to fit in the tariff policy into a " Mixed Economy " which is envisaged to be the form of economic organization in the future. Credit may of course be taken for filling in of certain lacuna in the old policy and the liberalisation of the governing principles. But the most disappointing feature is the absence of surprises and thrills. Nothing which has not been either expected by the public or warranted by the changed economic conditions is found embodied in the recommendations of the Commission.

With regard to the International Trade Organization, the Commission has failed to point out the fundamental weaknesses of the Charter. Their opinion about ratification is therefore based merely on some of the negative benefits available. In fact, the Havana Charter overlooks all that has happened during these eventful years and prescribes a code of behaviour which could be observed only in its breach. The Charter abounds with escape clauses because of its abstraction from reality. It would be ideal when there is a reordering of society through the establishment of economic complementarity between nations, through other means. Perhaps the performance of the Commission has been least satisfactory in respect of their assessment of the World Charter for Trade.

It might have been very helpful if the ultimate complexion of the economy had been defined taking into account the existing resources and other mutable factors in the country. The time required for reaching the pattern could have been roughly calculated and the available finance for executnig it had been indicated. The stages of work towards the attainment of it and the time schedule for it, according to the priorities prescribed, ought to have been given as a guidance for the policy making authority. The degree of inter-relationship between the different parts of the economy is a piece of information whose importance cannot be exaggerated. The blue prints of economic planning should contain this information. Having done this the Fiscal Commission could have defined the nature of tariff protection to assist its execution. Direct methods of control, like the quota schemes, are outlawed for being a non-conformable type of intervention in a free private enterprise economy. But it is necessary to realise that planning itself is such an intervention and if as a corollary of it, quota restrictions are imposed there should not be an objection from an economic standpoint. The attitude of the Commission towards them may be explained in terms of the general hostile atmosphere against controls developed on account of the inter-war experience. Nations perhaps have to take resort to them because of the incapacity of tariffs to yield all the desired results. So, while the Commission is right in preferring tariff protection, it is not realistic in preventing a liberal use of the quota system.

This protracted discussion leads us to the vital question of the role of tariffs in economic development. Tariffs will have a

part to play until the free trade millennium is reached. It would be reached when perfect complementarity between the economies of the world is attained. But it is problematic whether such an ideal could be reached in an imperfect world like ours. However, it cannot be reached quickly. Countries having identical economic patterns may continue to exist. Under such circumstances a free international market may not be helpful in fostering national patterns. Therefore tariff protection is assured a fairly long lease of life to serve a useful purpose in an imperfect world. To evolve a predetermined national economic pattern there ought to be a liberal use of tariffs. But they ought to be denied to countries that fail to conform and develop on prescribed lines. However, the ultimate objective ought to be the attainment of a new world order in which tariff protection along with other measures of control should become superfluous.

MATRILINEAL FAMILY BACKGROUND IN SOUTH INDIA

by

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1. *Plurality of family concepts*

South Indian family structure is in part based on matrilineal inheritance and succession.[1] Even where this is not the case as especially in Brahmin and Brahmanical society, the matrilineal family-pattern left yet palpable marks, also in the now patrilineal family-structure. Such survivals can be found in the position of the mother's brother and puberty-rites for girls,—apart from religious concepts, grouped round the figure of the mother-goddess[1a]

These and similar other matrilineal traits are generally less taken notice of than, and sometimes even mistaken for, remnants of the Joint Family structure. The two institutions are, however, different though, in South India no doubt inter-connected, phenomena. Both institutions are disintegrating in South India, the first giving way to a patrilineal (and patriarchal —) the latter to a small family structure; both of the 19th-century Western pattern. The small family comprises two generations only, whilst the joint family consists of three or more generations, the youngest often comprising a number of siblings and first cousins,[2] on either the matrilineal or patrilineal side, according to the general social system of the community concerned.

Joint families of a similar type are not unknown in the Western World, — especially not among the Southern Slavs[3] and other predominantly agricultural communities — but became increasingly rare, also in Europe, ever since the industrial revolution broke up family-estates of peasantry, gentry and nobility.

It is a well known fact that particular attitudes are fostered in joint families and that they form a distinct background for the character formation of the individual, by tending to create a family

1. Ehrenfels (1941), pp. 36 *seq.*, 71 *seq.*
1a. Ehrenfels—Gopalakrishnan (1952).
2. Desai (1936), pp. 10 *seq.*
3. Vinski (1937).

esprit de corps, experience in handling of younger children, the readiness to sacrifice personal —, to family — interests and, on the negative side, lack of individual enterprise, lack of independence in thought and action, often combined with lacking civic sense, as far as outgroups beyond the family limits are concerned.

Of an altogether different nature, however, are the attitudes which the matrilineal family structure favours;—irrespective of the fact whether this is the case in a matrilineal small, — or a matrilineal joint family. The most important features of the psychological trends, favoured in the matrilineal setting, will be described presently. A word on the history, in time, and geographical extension, in space, of matrilineal social system in South India should, however, precede this description.

Matrilineal joint families used to predominate on the Malayalam-speaking West Coast of South India,[4] just as the patrilineal joint family was well-established on the Tamil-speaking eastern section of the peninsula, ever since the patriarchal Brahmin ideology began to exert its influence;—also over non-Brahmin communities. This process started at least two thousand years ago. We have reason to believe that before this, the matrilineal order predominated in larger areas, and more thoroughly than it did until the first world war, or even a few centuries back, on the West Coast.[5] Undoubtedly, surviving traditions of this order play their part even now.

4. Ehrenfels (1941), pp. 58, *seq.*, 171, *seq.*, where more references are given in the bibliography.

5. I propounded this hypothesis at same length; comp: Ehrenfels (1941), pp. 58 *seq.*, 171 *seq.*, and saw later that it finds further support in matrilineal survivals among Tamil speaking isolated groups; comp.: Ehrenfels (1943), of the Indian mainland, as well as among the early Tamil immigrants into Northern Ceylon, who preserved (also linguistic) features of an earlier South Indian culture-pattern. The assumption of a local precedence of matriliny, as compared to patriliny in India has nothing to do with the older ideas of Morgan, MacLennan, Spencer, John Lubbock, and others who held that *all* human societies must at one time have passed through a *primitive*, evolutionary "stage" of matriarchy. This theory is no more discussed here, because ethnography of the last half-century has shown that the truly primitive food gatherers are neither matrilineal, nor patrilineal, but generally follow the *bilateral* type of social organization. The matrilineal system, on the other hand appears to have developed as a product of a higher, plant-cultivating village—civilization; comp.: Childe (1942), pp. 48, 49, etc., or even chalcolithic city civilization; comp.: Ehrenfels (1941) pp. 171, *seq.*, 185, *seq.*

Small, "single" families of patrilineal and, to a much lesser degree, also of matrilineal structure can still be found in the same South Indian area. The scarcity of small matrilineal families is mainly due, as will be explained later to the stigma of being "old-fashioned" which is attached to matriliny, as well as to the joint family system in South India, a concept which results in the destruction of the former, once the latter is abandoned, or broken up.[6]

The survival chances for small ("single") matrilineal families are somewhat higher among the matrilineal Khasi of Assam in the eastern extension of Northern India.[7] Let us however, now consider the most prominent trends of attitude and behaviour which the matrilineal family situation favours.

2. *Favoured trends in the basic matrilineal family pattern*

Inheritance of property, or succession in family—, clan—, and other titles, follows the line through the mother, in matrilineal societies, just as it follows that through the father in patrilineal societies. Inspite of this theoretical symmetry, the two types of family structure are far from complementary. A main factor of the difference between the actual working of the systems, lies in the fact that, owing to the matrilocal residence of all, children live in close contact with their mother's brother(s), who has legal obligations to, and rights over, them. A complementary figure (as *e.g.*, the paternal aunt) does not, generally, play an equally important rôle in patrilineal families.

A second, but by no means less important point of difference between the two systems lies in the legal backing which the matrilineal order provides for the weaker family-members, as compared to the stronger ones. There is not only the person of the mother to be mentioned here as compared to the father, but also the position of sisters and daughters, as compared to brothers and sons, finally, the frequent preference given to the youngest (daughter or sometimes son) in the inheritance rule of the minorate.[8]

The net result of this matrilineal family-structure, as compared to the patrilineal pattern, may briefly be summarized under the following main points:

(1) There is a distribution of authority, loyalty and responsibility to several individuals in the matrilineal family, whilst concentration of power and authority in one person (the father) is the rule of the patrilineal system. Children in a matrilineal family learn to respect two important male elders (maternal uncle and father) apart from the mother, as important authorities, whilst the father of the patrilineal family tends to absorb all authoritative power in his person,—even if he is not a full-fledged Roman *pater familias* with all family-members *in manu*,—including the mother. This basic family situation provides the background for an attitude of compromise and adaptation to, or handling of, divided responsibility, whilst the patrilineal family-situation tends to foster centralized power and authoritarian rule.[9]

(2) The physiologically and psychologically weaker members of the family (daughters, sisters, wives, mothers, as compared to sons, brothers, husbands, fathers and: youngest, as against elder siblings) are not only protected, legally, but enjoy certain preferential rights in inheritance of property and the transmission of family-name and tradition. The daughter in a matrilineal family has not only a secure economic and social position which, owing to the rule of matrilocal residence, she does not generally

6. This process is vividly illustrated by a number of detailed examples, given in a Mss. on *Nayar Kinship*, by Dr. Kathleen Gough (Miller), who kindly permitted me to see her work before publication which, however, is hoped to be under way by the time this article may appear in print.

7. Observations on this group, contained in the present review, are the result of the research-trips, carried out in 1949-52, with the financial support of the *Viking Fund, Inc.*,—now: *Wenner-Gren Foundation for Anthropological Research*, Inc., New York, which awarded two grants for comparative studies among matrilineal societies of India under my direction, for which I wish to express grateful acknowledgement on this occasion.

8. Cantlie (1934), pp. 22, 26, seq.

9. This is true although, or perhaps rather *because*, one of the reasons why the matrilineal joint family system of the Malayalam-speaking West coast in South India broke up, was the revolt of the average family-members against autocratic behaviour of their *karanavans*, or maternal uncles, managing joint family property. The reasons for their autocratic behaviour have mainly to be found in two outside factors: (1) imitation of the extremely patriarchal behaviour-patterns of Nambuderi Brahmins, with whom the matrilineal communities of the area have become closely inter-connected, since at least one and a half thousand years, and (2) the rapid population increase which more than doubled the matrilineal community within a period of half a century and naturally resulted in unprecedented overcrowding and dissatisfaction on the joint family estates; an important cause for the breaking up of the matrilineal joint family system to which Dr. Kathleen Gough-Miller has drawn attention, in a Mss., mentioned above.

has to loose, or to give up, at marriage but she is at the same time the vehicle of perpetuating the family-name and tradition. This situation prevents the neglect of girls in education and often also nourishment and other care, which is such a frequently observed feature in many patrilineal, societies. It is no doubt due to this that the Malayalam-speaking matrilineal communities of the West Coast in South India show the highest percentage of female literacy and that their girls were the first in India to take up University education and career.

Another factor, to which Malinowski drew attention after his detailed study of the matrilineal Trobriand islanders, is the changed position of the Oedipus-situation, which is less pronounced opposite the maternal uncle, than the own father, unless the maternal uncle holds a very domineering position, which in most matrilineal societies he does not to the same extent, as he does in South India. This again, appears to be due, to adaptation to patriarchal Brahmin concepts there, as was shown above (F.N. 9).

The psychological and emotional ties between children and fathers are generally not adversely affected by the lack of legal formulation. The opposite may in many cases be said. But the ties between widowers and their children are often weakening, or cease to exist, after the mother's death, if the widower remarries, in which case his children of the first marriage will be staying in, and be looked after by, their mother's brothers, sisters, or other relatives.

3. *Change from matrilineal to patrilineal patterns*

The coincidence of recent changes from the joint family to small-family — and from the matrilineal to the patrilineal family structure suggests to many a necessary link between the two latter named structures and " modern " economic developments, generally. This assumed connection is based on the fallacy of identification between the joint family and the matrilineal organization to which reference has already been made previously.

Elements of basic social behaviour in a democratic order, such as readiness to compromise and legal protection of the psycho-physically weaker, are no doubt contained in the matrilineal family structure. Their fructification for the building up of a democratic society would appear to be possible, especially where a well-established tradition in political democracy is missing. The disintegration and, partly even disappearance, of powerful and by

no means truly " primitive " matrilineal societies in all five continents of our planet, and during the last four to five thousand years, should not blind us to their intrinsic values nor their educational possibilities for a new society-structure at the present juncture. The great success of the patrilineal family — and patriarchal state-organizations which were first evolved among the nomadic herdsmen, in the Central Asiatic and East European *steppes*, was partly due to the overwhelming military power which the domestication of the horse lent to these organizations in the form of swift cavalry armies.[10] With their help alone was it possible to overrun the richer city-, and village-civilizations of the fertile valleys and tropical or subtropical plains, which were at least in part based on a matrilineal order of society.[11] The disappearance of most matrilineal survivals is, even now, due mainly to the direct, or indirect, influence which the prestige-value of the patrilineal order and its erstwhile cavalry regiments exercised ; — *not* to any innate superiority, nor less to a necessarily " primitive " character of the matrilineal social structure. Undoubtedly existing primitive features in many surviving, or extinct, matrilineal societies are as accessory and as little essential features of these societies, as the undoubtedly existing progressive and organisatory qualities of the Central Asiatic and east European horse-riding nomads were entirely confined to them.

10. Turner (1941), Vol. I, pp. 242, *seq*., 361, *seq*., 473.
11. Childe, (1942), p. 59.

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SANSKRIT AND PRĀKṚT METRICS

by

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The earliest Sanskrit literature that we possess is in metrical form; indeed, it is called after the Sanskrit word meaning metre, Chandas. Not only are the hymns of the Vedas in various metres, but the Vedas themselves contain a large amount of mystical speculation and equation about metrics, besides the numerous references to the metre-names, their technical divisions and characteristics. Some of these mystic sentiments use metre-names in lieu of the numerals signified by their syllabic extent, e.g., Gāyatrī for six, Anuṣṭubh for eight; but there are others where deeper significances, mostly dark, are intended. The word Chandas itself means Metre as well as Idea and Desire; and it therefore appears possible that when the Vedic poets called their measured utterances Chandas they meant that these utterances are an Incarnation of their mental idea or vision. That the very act of perfecting such an utterance perfected, in the process, the mind and person of the poet is emphasised by another Vedic observation that Chandas is Śilpa and Ātmasaṁskāra. As the root 'Chand' means 'to please' or 'make one favourable to oneself', Chandas might also have signified an utterance designed to please a god and secure his favour. A god invoked by a Chandas is supposed to mount that Chandas as his vehicle; thus did Chandas become a chariot, Ratha. As an act of skill and beautification, the art of versification was compared to the most well-known craft of the times, chariot-building. The Vedic poets were self-conscious versifiers.

As already remarked, terms of prosody occur in the Vedas; the Brāhmaṇas and Upaniṣads contain numerous myths and mystical speculations about the metres. It is in the Sūtras that we have definite treatment of the subject of prosody. The Śāṅkhāyana Śrauta Sūtra, the Ṛk Prātiśākhya of Śaunaka (Chs. 16-17), the two Anukramaṇīs of Kātyāyana and the first two chapters of the Nidānasūtra ascribed to Patañjali deal with metre. Reciters of the Veda are expected to remember not only the author and deity of a hymn but also its metre. Chandas is thus one of the six limbs

(aṅgas) of the Veda, and is called the very feet of the Veda. Generally a treatise on Vedic and classic metres ascribed to a Piṅgala is referred to as the text mentioned as a Vedāṅga, but the treatise is not very old. The Upanidāna Sūtra, called a Pariśiṣṭa of the Sāma Veda, refers to the sources of metrics as the Brāhmaṇas, the works of Tāṇḍin and Piṅgala, the Nidānasūtra and the Ukthaśāstra.

The metres in which the Ṛgvedic hymns are composed are fifteen in number, seven among these are more popular and of these again three claim the largest number of stanzas. "As works of mechanical art, the metres of the Ṛgveda stand high above those of modern Europe in variety of motive and flexibility of form. They seem indeed to bear the same relation to them as the rich harmonics of classical music to the simple melodies of the peasant". The Vedic metre occupies an intermediate position between the Avestic and the Classic Sanskrit metre. In the former only the total number of syllables was fixed and in the latter, besides the total number, the quantity of each syllable too was fixed. In between these two we find the Vedic metres showing a slow process of the hardening of the rhythm of the line. Generally the last part of a Pāda or line is more defined, and the caesure occurs in different places. The fluidity of the quantity of each syllable gives the appearance of a simplicity or an undefined character to the Vedic verse; but surely there were in these lines definite and perhaps complicated rhythms which the Vedic poet sensed correctly, but which later ages which preserved the svara, could not remember owing to the attunement of the ear to the later metres of well defined syllabic quantity.

The Gāyatrī is a metre of three octo-syllabic lines claiming about one-fourth of the Ṛgvedic stanzas; a fourth line of the same measure added to it gives the Anuṣṭubh, a metre which in the earlier period was less popular than the Gāyatrī, but as time went on threw the Gāyatrī out of vogue. Next to these came the Triṣṭubh and Jagatī with eleven and twelve syllables a foot. As a result of the inventive urge, several new varieties were produced by mixing these metres; thus Uṣṇik is a metre of 28 letters in three feet, $8 + 8 + 12$, the same is Kakubh if the combination is $8 + 12 + 8$ and Pura Uṣṇik if it is $12 + 8 + 8$. The 24 letters of the Gāyatrī could be made into four feet, instead of three, of six each and it is on the basis of this variety of Gāyatrī (6×4) that the Gāyatrī as a metre of six letters in the books on classic Sanskrit metres is to be understood. Similarly, the four-feet Anuṣṭubh could go into three feet of *12* + 8 + *12*, giving a type called Pipīlikāmadhyā, slender in the middle like an ant. Bṛhatī of four feet of 36 syllables gives the varieties Purastād Bṛhatī (*12* + 8 + 8 + 8), Pathyā or Skandhodgrīvī (8 + 8 + *12* + 8), Sato Bṛhatī or Nyaṅkusāriṇī (8 + *12* + 8 + 8) and Upariṣṭād Bṛhatī (8 + 8 + 8 + *12*). Triṣṭubh (4 × 11 = 44) yields the variety called Jyotiṣmatī by the distribution of 12 + 12 + 12 + 8. Some of the verses are deficient or hypermetric by a letter; a Gāyatrī with one syllable less is called Nicṛt, and with one syllable in excess, Bhūrik. When such lines are recited, the pronunciation makes the necessary adjustment; e.g., Tat savitur vareṇyam in the Great Gāyatrī is a Nicṛt and Vareṇyam here is to be pronounced as Vareṇiyam by resolving the conjunct consonant. We also have in the Vedas a variety of metres put together into a Strophe.

Out of the Vedic prosody was classic prosody born. The most important Vedic metres in this respect are the Anuṣṭubh, Triṣṭubh, and Jagatī of 8, 11 and 12 syllables, from which the classic Anuṣṭubh called Śloka and several varieties of eleven and twelve syllabled metres arose. A stanza is called Padya, made up of feet, and Vṛtta, twined. As in Vedic prosody, so in the classic, a metre is determined by the number of its syllables, the difference being that the rather fluid condition of the quantity of each syllable in a Vedic verse becomes strictly fixed in the classic times. Such a process of fixation can be seen in progress through the later Vedic, Upaniṣadic and Epic literatures. The Vedic Anuṣṭubh, to begin with, has an iambic cadence, Laghu or Jāgatī Vṛtti as the Nidānasūtras call it; slowly it developed a trochaic cadence, Guru or Traiṣṭubhī Vṛtti, which came in to vary the former. "The Ṛgveda shows every gradation from the normal Anuṣṭubh rhythm to this (epic Anuṣṭubh rhythm)." The Anuṣṭubh is, so to say, the Sanskrit verse *par excellence,* and hence perhaps it is called by the name Śloka which came to mean 'stanza' in general. Śloka means also 'praise' and this fact shows that this metre was used largely in the early panegyrics in which classic epic literature had its origin Not only the two epics, the Rāmāyaṇa and the Mahābhārata, but many parts of classic poems, all the Purāṇas and most of the technical treatises are written in this metre. Of all the metres, this alone retains some amount of fluidity of syllables. In the definition of the classic Anuṣṭubh it is said that the sixth shall always be long, the fifth always short, and the seventh short in the even feet; but even here it is the last alone that is an inviolable condition; for the rest, the books say, what is essential is that the

Śloka-rhythm should ring true to the ear. This flexibility and consequent variations of the syllables in the Anuṣṭubh gives numerous varieties of the metre, some of these having been recognised and named Pathyā, Vipulā and so on. Next to the Anuṣṭubh, the Upaniṣads and the Mahābhārata use the Triṣṭubh for the greater part. It is from Triṣṭubh-Jagatī that a number of defined classical rhythms developed, Upajāti, Indravajrā, Upendravajrā, Vaṁśastha, Indravaṁśa, Śālinī, Vātormi, Vaiśvadevī, Rucirā, Rathoddhatā, Bhujaṅgaprayāta, Drutavilambita, Praharṣiṇī, etc. In the Mahābhārata many odd lines, and occasionally a whole stanza, occur in these rhythms. In the Rāmāyaṇa however, the Triṣṭubh variety employed largely is of the fixed Upajāti class only, and it is significant to note in this connection that an exact Upajāti type called Ākhyānakī, meaning perhaps the metre of the Ākhyānas, is mentioned and defined by the books, though strangely under the Ardhasama Vṛttas. Though parts of the Mahābhārata are later than the Rāmāyaṇa, we find in the former a larger incidence of archaic metrical forms like the iambic Anuṣṭubh and fluid Triṣṭubhs varying in each line in their rhythms. These compositions in verse of fluid syllable quantity were sung by the rhapsodists and their musical recital kept up the unity of the Anuṣṭubh and Triṣṭubh impressions. In their present redactions, the two epics have a few examples of other metres too, Puṣpitāgrā, Vaitālīya and the like.

What strikes one when one looks through an anthology of Sanskrit poetry is the rich variety and beauty of the metres. "Sanskrit prosody ...... is probably not surpassed by any other in variety of metre or in harmoniousness of rhythm." Some of the text books describe about 540 metres, while the Prastāra or permutation worked out by them speaks of many thousands of varieties. Though it is clear that the source of the classic metres is to be seen in Vedic hymns, it is not definitely known when and how these numerous varieties came into being with defined forms and names. The great epic, as we have said, has the Triṣṭubh varieties only in a formative stage. In the Mahābhāṣya (c. 150 B.C.) of Patañjali, we already come across some of the developed metres, the Mālinī, Praharṣiṇī, Pramitākṣarā, Vasantatilakā, Samānī, Vidyunmālā, Toṭaka, and Dodhaka. The Gaṇapāṭha under Pāṇini, IV. 3. 73, speaks of Chandoviciti. Ṣaḍguruśiṣya, a scholiast, mentions Piṅgala as a younger brother of Pāṇini; Rājaśekhara places Piṅgala just after Pāṇini and the Divyāvadāna makes Bindusāra send his son Aśoka to read under Piṅgalanāga. We may assume that by the Mauryan age many of these metres had come into vogue necessitating Piṅgalanaga's codification. The first three chapters and a half of *Piṅgala's Chandas Sūtras* are devoted to Vedic metres; in the remaining portion about 119 main varieties are defined, some of them having numerous sub-varieties. These metres fall into two groups; those measured by Mātrās or morae, e.g., the Āryā, and those whose letters are of fixed quantity, Akṣaracchandas, this quantity being calculated in terms of eight groups of three letters called Gaṇa or Trika. The latter class again comprises three groups, Sama, Ardhasama and Viṣama, those made up of four equal feet, of two equal halves with one foot differing from the other, and of four feet, each foot differing from the others. The first is the most numerous group. Some of these, the longer ones, e.g., Mālinī, Mandākrāntā, Śārdūlavikrīḍita, etc., have definite caesurae called yatis. Though caesura is an important feature, poetic practice allows some cases of weak caesurae too. The Kavidarpaṇa, says on the authority of a writer on prosody, named Svayambhū, that caesurae are insisted upon only by two authorities, Piṅgala and Jayadeva, and that a large number of authorities like Māṇḍavya, Bharata, Kāśyapa and Saitava did not insist upon this feature. This is not a safe statement to be relied upon, for Bharata does mention caesurae, and above all, poetic practice shows that it is an essential element of Sanskrit prosody.

From a consideration of the fanciful names of many of the metres, which are after women in several emotional attitudes, and objects of Nature, it has been suggested that these had their origin in an early outburst of lyric poetry. Such lyrics might have existed as independent poetic compositions or as part of the musical fittings of the old plays which were produced in an operatic style. We find that Bharata's Nāṭya Śāstra has dealt with these metres in two contexts, once under the text of the drama (Ch. 16) and again under song (Ch. 32). Bharata describes all the metres found in Piṅgala, and the only differences are in some names and some additional varieties. Among commentaries of Bharata, Nānyadeva's work, Bharata Bhāṣya, has valuable information on metres; according to this authority, Nārada has dealt with metres in his music treatise.

In Vedic prosody itself, the Uṣṇik variety having an octosyllabic Anuṣṭubh line in between two twelve-syllabled Jagatī-lines is called Pipīlikā-madhyā; the Nidāna Sūtra adds that the Bahvṛcas called the same Madhyejyotis. Similarly Piṅgala says in his Sūtras that the Vasantatilakā is called Siṁhonnatā by

Kāśyapa and Uddharṣiṇī by Saitava, and that Rāta and Māṇḍavya called the Daṇḍaka by a different name. Kedārabhaṭṭa, a late writer on metrics, mentions the following older authorities in a lineage of teachers and pupils: Śiva-Guha-Sanatkumāra-Bṛhaspati-Indra-Śeṣanāga-Piṅgala; an earlier writer Yādavaprakāśa in his commentary on Piṅgala's work, gives the lineage as Śiva- Indra-Bṛhaspati-Māṇḍavya-Saitava-Yāska-Piṅgala. The writer called Virahāṅka adds Vāsuki to the list of authors of metrics. It is likely there are old treatises on metres ascribed to all these persons, in which differences in the naming of metres were common. The Nāṭya Śāstra of Bharata has a number of metres with different names: Makarakāśīrṣa for Śaśivadanā, Candralekhā for Vaiśvadevī, Hariṇaplutā for Drutavilambita, Aprameya for Bhujaṅgaprayāta, Prabhāvatī for Rucirā, Nāndīmukhī for Mālinī, Śrīdharā for Mandākrāntā and so on. In the Varṇavṛtta sections of the texts dealing with Prākṛt metres, many of the Sanskrit measures turn up with a different set of names.

Considering the fanciful nature of these names and these differences from one another, one has to assume that different writers developed different series of metres giving them their own names; in fact Virahāṅka says actually that different names are given to the same metre by different authors just as father and mother call the same child each by a pet name of his or her own. In the method of scansion too, writers followed different methods; the usual method is by employing gaṇas or groups of three letters in various combinations of longs and shorts; but some employ symbolic words and letters, e.g., Piṅgala and Janāśraya; Virahāṅka knows such devices, but he, all the same, describes letter by letter in a tiresome manner.

The principle of mixing the feet of two different metres on an inventive basis is seen even in the Vedas. Classic metres developed on this basis as well as the combination of parts of different metres. Parts of a line are detachable as typical cadence patterns, something like the Greek cola or the svara-groupings or sañcāras of music; and such of these as have mutual harmony or saṁvāda can be combined to form fresh metrical schemes. Two Samānikās give one Citra; two Pramāṇikās one Pañcacāmara; Śālinī with a central filling up gives Mandākrāntā as Kṣmendra pointed out in his work; Mañjubhāṣiṇī is Rathoddhatā with two short letters added at the beginning; the first two caesurae of Hariṇī are Mandākrāntā while the last is Śārdūlavikrīḍita; Citralekhā, Śārdūlalalita, Kusumitalatāvellita, Meghavisphūrijita, Surasā are some other examples of this class. Amaracandra shows in extenso in his Kāvyakalpalatāvṛtti how with slight alterations metres lead from one to the other. Where a whole feet of one metre is mixed with that of a different metre, we have regular Upajātis. Another line on which newer metres have evolved is by the resolution of an initial or final long or two into an iambic short and long, e.g., Svāgatā and Rathoddhatā. But in all these cases we cannot say which preceded and which followed, though one may be disposed to think that the more euphonic one was a later perfection.

About 150 treatises on classic metres are known besides about fifty commentaries. Of these it is necessary to mention only a few: the works of Kātyāyana, Jayadeva, Janāśraya, Kṣmendra, Kedārabhaṭṭa and Gaṅgādāsa. The Vṛttaratnākara of Kedārabhaṭṭa is the most popular handbook, having numerous commentaries, and equally well known is Gaṅgādāsa's Chandomañjarī. The metrics of Jayadeva and the Jānāśrayī are both earlier. Kātyāyana is known only from citations and Kṣemendra, the Kashmirian critic of the 11th century has something original to offer in his Suvṛttatilaka. Other works in which metrical material is also found are some of the Purāṇas, (Agni, 328-334, Garuḍa I, 205-212, Viṣṇudharmottara II. 3, Nārada 57), and the Bṛhatsaṁhitā of Varāhamihira.

It may be asked how many of the numerous metrical varieties were actually handled by the poets. An idea of the varieties occurring in the epics and in the Mahābhāṣya has already been given. As Bharata says, it is from the octosyllabic onwards that we find used in the Kāvyas. Taking Kālidāsa's poems, we see that the poet handles twenty varieties in his Raghuvaṁśa of nineteen cantos; of these the metres sustaining the main portions of the cantos are Anuṣṭubh (in seven cantos), Upajāti (in seven cantos), Vaṁśastha, Viyoginī and Drutavilambita (each carrying him through one canto) and Rathoddhatā (two cantos); in his Kumārasambhava, Anuṣṭubh takes the poet through two, Upajāti three, Viyoginī one, Vaṁśastha one and Rathoddhatā one. Of the metres introduced by Kālidāsa to break the monotony in the latter or closing part of the cantos, the poet's favour goes to Vasantatilakā; next come Mālinī, Mandākrāntā, Praharṣiṇī and Puṣpitāgrā; and such varieties like Hariṇī, Toṭaka, Śālinī, Aupacchandasika, Svāgatā, Mañjubhāṣiṇī, Mālabhāriṇī and Nārāca are also met with.

His Meghasandeśa is wholly in Mandākrāntā. In his dramas, he employs among the larger ones, Śikhariṇī, Sragdharā and Śārdūlavikrīḍita often; roughly a half of the composition in his Śākuntala is in the form of verses and these are in about twenty varieties. A metre which he does not use in his Kāvyas, but which he uses fully in his dramas is the Āryā. Bhāravi and Māgha exhibit still greater variety and sustain whole cantos in the rarer types too. We find in their poems Udgatā, Pramitākṣarā, Jaloddhatagati, Jaladharamālā, Candrikā, Mattamayūra, Kuṭila, Vaṁśapatrapatita and Prabhā. Bhaṭṭi uses in addition Āryā (rare in Kāvyas), Aśvalalita, Nandana, Pṛthvī, Rucirā, Narkuṭaka, Tanumadhyā (six-syllabled and rare in Kāvyas) and Praharaṇakalikā. Māgha handles nine more as also some obscure varieties. A metre newly improvised by a Sanskrit author is that of the song of the Gopīs (Gopikāgīta) in the Bhāgavata Purāṇa in four feet of eight morae each, having a musical rhythm. The Rāvaṇārjunīya of Bhaumaka has numerous Ardhasama and Viṣama metres of an unidentifiable character. In later times some minor works, praises on kings and gods, were produced to illustrate the numerous metrical varieties.

A large number of these metres show a very sharp rise and fall by the regularity of the alternating short and long, and a distinct rhythm of time-measure. These lend themselves to an easier musical recitation than the rest whose rhythms are less marked, and by reason of this less monotonous. Nārī, Mṛgī, Kanyā, Satī, Paṅkti, Śaśivadanā, Somarājī, Kumāralalitā, Citrapadā, Māṇavaka, Vidyunmālā, Samānikā, Pramāṇikā, Gajagati, Maṇimadhyā, Rukmavatī, Mattā, Tvaritagati, Sumukhī, Anukūlā, Dodhaka, Moṭanaka, Śyenī, Jaloddhatagati, Bhujaṅgaprayāta, Toṭaka, Sragviṇī, Kusumavicitrā, Tāmarasa, Praharaṇakalikā, [illegible], [illegible], Pañcacāmara, Madirā, Tanvī, Krauñcapada, Daṇḍaka, not to mention many others found under Piṅgala's Gāthā and worked out in the Varṇavṛtta section of the Prākṛta Paiṅgala, show a palpable musical rhythm.

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Principles of much validity cannot be deduced from the practice of poets on the employment of particular metres as appropriate to particular themes and emotions. Some tentative and subjective formulations can be made, as indeed two writers, Bharata and Kṣemendra, have done. Bharata says in his Nāṭya Śāstra that one of the topics in metrics is Sthāna or place, which the commentator Abhinavagupta interprets as appropriateness with reference to theme and country; Kātyāyana, a writer on prosody, is quoted to say that the Sragdharā is good for describing the valour of a hero and the Vasantatilakā for portraying the charms of a heroine; that the Easterners favour Śārdūlavikrīḍita and the Southerners Mandākrāntā. Certain preferences of people of certain localities can be noticed in the treatise of Piṅgala when he speaks of a Vānavāsikā metre and the Prācyā and Udīcyā vṛttis under Vaitālīya. Kṣemendra always displays some refreshing originality. In his Suvṛttatilaka, he devotes some attention to these aspects of the handling of metre; none will object to his observation that Anuṣṭubh is good for didactic compositions, Purāṇas, stories and scientific treatises and within a poem itself, for the opening, long narration, summing up and didactic portions; but when he says that the Upajāti is good for describing the heroine or the seasons, the Rathoddhatā for describing the moon-rise, the Mandākrāntā for separation—he is only deducing rules from the poems of Kālidāsa. Prowess can be well brought out by the Śārdūlavikrīḍita and certainly the swollen Sragdharā is suitable for describing a stress of emotion, high winds, etc. According to Bharata, the Āryā is good for love (XIV, 116-20), Śakvarī (of fourteen syllables) for pathos, the longer ones for heroism and the longest for battle scenes. Kṣemendra notices also that some poets favour and excel in particular metres, e.g., Abhinanda in Anuṣṭubh, Pāṇini in Upajāti, Bhāravi in Vaṁśastha, Kālidāsa in Mandākrāntā, and so on. More valuable is Kṣemendra's consideration of the points to be borne in mind in particular metres by one who wishes to bring out the special excellence of those metres,—these points relating to the opening, the break and the cadence and the employment of suitable letters in these parts of the line. One may in this connection examine the pictures suggested by the very names of some of the metres; the Drutavilambita meaning "Fast-slow"—its rhythm quick in the opening with three shorts and that of the remaining part rendered even by longs breaking the shorts; the Vaṁśapatrapatita conjures up the beautiful picture of the small bamboo leaf breaking loose from the stem, and light as it is, slowly and gracefully undulating its way down in the wafting breeze; but how far or how long such qualities can be harnessed with prominent effect for poetry is well-nigh an impracticable question. Other images roused are Jaloddhatagati (the swollen flood), Hariṇī, Aśvagati, etc., from the animal realm, and Kusumitalatāvellita (a tossing creeper in bloom), etc., from the plant world. In the Śikhariṇī, Vāmana suggests, one sees an ascent and descent as on a mountain. That such names based on

the similarity of the syllabic structure of metres to some objects were common even in the Vedic times is seen from the Pipīlikāmadhyā noted already and explained as such a name by the Devatādhyāya Brāhmaṇa. Another set of names are after women in different emotional situations, suggesting their origin in early lyric poetry. Though we cannot say anything about these being used for particular contexts, we may note the fact that one such, the Viyoginī signifying separation, is used by Kālidāsa in both his poems in situations depicting lovers in separation.

In a drama verses figure in the midst of dialogues like blossoms on green twigs, marking the manifestation of some climax of feeling or the expression of a fine idea. That some at least of the verses were sung is the view expressed by Abhinavagupta. In an operatic version of Act IV of the Vikramorvaśīya of Kālidāsa, we find the Sanskrit verses given corresponding Prākṛt songs.

When reading the verses, the practice is to do a sort of recital. In South India, there are at least four distinct modes of reciting the verses, which for this purpose fall into four classes: the Anuṣṭubh is recited with accent svaras; the rest are rendered in musical modes, the musical svaras figuring in these being too few to admit of any Rāga-identification. The Āryā, the Upajāti and all the longer ones beginning with Mālinī form these three groups; in the Āryā-recital, slight traces of Saurāṣṭra or Māyāmālavagaula can be seen; in Upajāti-Vaṁśastha, Punnāgavarālī strikes the ear; and in the longer verses, the recital lends itself to be dragged on to Śaṅkarābharaṇa or Yerukulakāmbhoji, but by itself does not show any distinguishable melodic shade. In the texts on prosody the only instance of a remark on the way to read a particular metre is in the Prākṛta Paiṅgala, I. 56, with reference to the Gāthā (Āryā) whose four feet are to be read respectively in the gaits of swan, lion, elephant and snake.

Rhyme is no part of Sanskrit prosody though final rhymes of single syllables or groups of them occur in epic verses. Rhyme comes under rhetoric. Prākṛt prosody however gives some place to rhyme.

Sanskrit, as also Prākṛt, prosody has exerted much influence on Dravidian Prosody; South Indian literatures have borrowed a number of Prākṛt and Sanskrit metres. Some examples of the counter influence of vernacular metres on Sanskrit poets can also be cited. In his Yaśastilakacampū (Ch. I, Kāvyamālā edition, pp. 15-16), Somadeva has a stanza of many rhyming feet in the

Raghale metre common in Kannaḍa and Telugu; the same poet uses a little later the Prākṛt and vernacular metres Varṇa, Mātrā, Catuṣpadī, Paddhatikā and Ghattā. Some Sanskrit inscriptions too in the Deccan and South India have verses of unfamiliar measures which may bear the influence of local literature. Some later Sanskrit poets, especially authors of praises on gods and kings, have borrowed from the Dravidian verses, the practice of second-syllable rhyme (e.g. Āryāśataka in the Mūkapañcaśatī and the Rāma-Aṣṭaprāsa Śataka of Rāmabhadra Dīkṣita).

PRĀKṚT METRES

One of the metres whose popularity is less than that of the Anuṣṭubh only is the Āryā which is measured by Mātrās or Kalās, meaning morae, a short letter being one Mātrā and a long one, two. The Āryā is used by the classic poet more in the dramas than in the poems, but scientific treatises like the Sāṅkhya Kārikā began to use it freely. It is generally held to be a metre borrowed from Prākṛt literature. Jain books and Buddhist works to some extent use it. Among Prākṛt poetical compositions, the Gāthāsaptaśatī of Hāla uses it. Its Prākṛt name is Gāthā and in Sanskrit it is called Āryā and Jāti. Just as a Grammar of Prākṛt is ascribed to Pāṇini, along with his Sanskrit grammar, so also a text on Prākṛt metres too is ascribed to Piṅgala along with his text on Sanskrit metres; but the Prākṛta Paiṅgala is a definitely later work. In two chapters, the work deals with the two classes of Prakṛt metres, those based on Mātrās and those on syllables (Varṇa). Even among the metres of the first class determined by morae, there are many in which, besides the total number of morae, certain schemes of longs and shorts are also insisted upon. Unfortunately no text on Prākṛt metres deals exclusively with the Prākṛt metres; those available, including Piṅgala's, mix up the Sanskrit metres too; a late commentator like Lakṣmīnātha Bhaṭṭa even supplies the omitted varieties from Sanskrit texts. One may venture to suggest the following distinctions between Prākṛt and Sanskrit metres: Prākṛt metres were built by morae, while, from the Vedic times onwards, Sanskrit metres were developed on syllabic quantity, in its two-fold aspects, total number and individual character. The rhythm of the Prākṛt metres, being in closer touch with folk-life and singing, was of a simple but palpable musical variety whereas Sanskrit metres showed subtle and difficult rhythm. A third distinction is that while rhyme and alliteration were part of Prākṛt metrical definitions, Sanskrit

metrics did not comprehend rhyme. A fourth characteristic is that while, according to some at least, caesura is an essential element of Sanskrit verse, it is not a feature of Prākṛt versification. A fifth difference may also be added that in Prākṛt prosody, there are, as in the Vedic, some strophe-like combinations of verses in two or more different metres; the Kavidarpaṇa describes the Ṣaṭpadī, Navapadī etc., as strophes of this description, the Ṣaṭpadī for example being a Pañcapadī Mātrā with an Ullālaka Dvipadī tagged on; each point at which a different metre is mixed being called a Bhaṅga, these strophes get the names Dvibhaṅgī, Tribhaṅgī and so on. Among other treatises on Prākṛt metres, besides the Prākṛta Paiṅgala, mention may be made of the Vṛttajātisamuccaya of Virahāṅka, Gāthālakṣaṇa of Nanditāḍhya and the Kavidarpaṇa. Hemachandra's Chandonuśāsana is an extensive and comprehensive treatise on both Sanskrit and Prākṛt prosody.

The first metre dealt with in the Prākṛta Paiṅgala is the Gāhu of 54 Mātrās, with 27 for each half. The next is the important Gāhā or Gāthā (Āryā) having 57 Mātrās, 12, 18, 12, 15, the different distributions of the longs and shorts here giving the 26 subvarieties of the Gāthā, Lakṣmī, Ṛddhi etc. The Vigāthā is a Gāthā turned into 12, 15, 12, 18. Similarly, gradually elongated varieties of the Gāthā are Udgāthā (60), Gāhinī and Siṁhinī (62) and Skandhaka (64), in all of which the first and third feet are constant with 12 morae. The Setubandha of Pravarasena is mainly in Skandhakas. Dohā (Dvipatha) is 13 × 11; Rolā 24; Gandhāna 17 × 18 is marked by rhyme; Caupayia (Catuṣpadikā) is 30 morae, permitted to go into four stanzas of 16 feet; this and the Ṣaṭpadikā are said to have caesurae. As an example of a morae metre in which a particular long-short combination too is insisted upon, may be cited the Pajjhaṭikā, whose cadence must be marked by a Ja-gaṇa, ◡ — ◡ In Alihalla, a syllabic rule as well rhyme is enforced. Rāḍḍā is a strophe, its 68 morae being supplemented by a Dohā at the end. Among other metres, one comes across some provincial names too, Saurāṣṭrī, Ābhīrā and Māhārāṣṭrī. Additional varieties are found in the Vṛttajātisamuccaya and the Kavidarpaṇa, one such being the alliterating Galitaka of which many examples are found in the Setubandha.

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KULAŚEKHARA IN TELUGU LITERATURE

by

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The influence of Vaiṣṇavism on Telugu Literature has not yet been taken up by Telugu scholars. Chronologically, Nannayya Bhaṭṭa the first known poet of the 11th century is a contemporary of Śrī Rāmānuja the promulgator of Viśiṣṭādvaita philosophy, and the whole literature after Nannayya was completely overpowered by Śaivism. The Vaiṣṇava cult was introduced into Telugu literature in the 14th century by Krishnamacharya and Gopana, and in the 15th century by the famous Saṅkīrtanācārya of the Tallapākam family, i.e. Annamayya through his Saṅkīrtanas on God Veṅkateśvara at Tirumalai Tirupati.

The reign of Śrī Kṛṣṇa Deva Rāya (1509-26) which is justly styled as the golden age in Telugu literature distinctly marks the advent of Vaiṣṇavism in Telugu. Kṛṣṇa Rāya's Amuktamālyada (Cūḍikkoḍutta Nācciyār) the crowning work of the age as emanating from the crown, is the first work dealing with Viśiṣṭādvaita philosophy and lives of Āḻvārs. Among the lives of Āḻvārs, the story of Toṇḍaraḍippoḍi Āḻvār[1] and Deva Devi, with its Bhakti, Sṛṅgāra element naturally first attracted the Telugu poets and the poets Chadalavāda Mallana, Sārangu Thammaiah and Pidugu Venkatakrishna and Vijayarāghavanāyaka handled this theme with great success. It may be mentioned that Thammaiah's work known as Vaijayantī Vilāsamu is one of the most popular prabandhas in Telugu Literature.

Kulaśekhara's life is another, that had the fortune of being written separately, known as Kulaśekhara Mahipala Charitramu. The present article is written to bring this work to the notice of Non-Andhra scholars in general and Kerala scholars in particular.

The Āḻvārs in Telugu Literature are styled as "Paramayogīs" and hence the appellation to the works relating to their lives as Paramayogi Vilāsamu.

1. According to the History of Śrī Vaiṣṇavas, Kulaśekhara who was born in B.C. 3075 is chronologically earlier than Toṇḍoraḍippoḍi born in B.C. 2814 (Pages 5 and 7). The latter got the suggestion to name himself as Toṇḍoraḍippoḍi from the works of Kulaśekhara (Page 28).

The life of Kulaśekhara is first given in Telugu in Paramayogi Vilāsam (Dvipada and Padya) with the lives of other Āḷvārs. It is also given in Ācārya Sūktimuktāvali,[2] an encyclopedia in verse of the Vaiṣṇava spiritual heirology. Kulaśekhara Mahīpāla Caritra in Telugu, exclusively deals with the life of Kulaśekhara.

Paramayogi Vilāsamu[3] (Dvipada work) of Tiruveṅgalanātha popularly known as Cinnanna of the famous Tāllapakam Saṅkīrtanācārya family gives the story of Kulaśekhara. This work is in Dvipada or couplet style in eight asvasas and is considered to be one of the best books in that type of literature. The author is a master hand in Dvipada prosody and is only excelled by Palkuriki Somanātha, the first and the greatest of Dvipada Kāvya poets in Telugu. As in Padyakāvya the stories of all the Āḷvārs are given in this book. The story of Kulaśekhara occupies in the third canto, pages 179 to 231 in 1012 lines or 506 Dvipadas. This work does not refer to Mukundamālā but refers to his Tamil work Perumāḷ-Tirumoḷi.

Padya Work

Contemporaneous with the above work is Paramayogi Vilāsamu by Siddhirāju Timmarāju of the Arviti family who were staunch Vaiṣṇavites. Timmarāju was the Governor of Koṇḍavīḍu, and his benefactions to the temple at Maṅgalagiri (Guntur district) reveals his adherence to Vaiṣṇavite faith. This work is in campu form and contains 5 asvasas or cantos. The life of Kulaśekhara is given in the third canto from the beginning in 118 verses. Verse 88 states that Kulaśekhara was the author of the well-known devotional hymn Mukundamālā.

Kulaśekhara Mahīpāla Caritramu[4]

This Telugu work, describing the life of the well-known exponent of Śrīvaiṣṇava Religion is an unprinted work, on palm leaf the particulars of which are as under.

2. History of Sri Vaishnavas by Late Sri T. A. Gopinatha Rao, M.A., 1917. "Ācāryasūktimuktāvalī" by Namburi Kesavacharya. Printed in Ananda Press, Madras 1922, Pages 14-17. This is a voluminous work in 24 ullāsas in campu style (Poetry and Prose).

3. This work is printed in Kakinada Printing Works. Kakinada (East Godavari District) in 1928 by Sahitya Chakravarti Dr. R. V. K. M. Surya Rao Bahadur Varu, Maharajah of Pithapuram.

4. Vide D. 2077. Descriptive catalogue of Telugu Manuscripts in the Government Oriental Manuscript Library, Madras, Vol. IX, Page 1313.

"Palm leaf size 14 × 1¼ inches, Pages 198, Lines 7 on a page Character Telugu, Condition fair, appearance old, Mode of writing good and free from mistakes.

This is a prabandha in four āśvāsās (cantos). The author is Śeṣamu Raghunāthācārya son of Veṅkaṭācārya. The author gives in the introduction (Avatārikā) of the work, the following particulars about his family. He is a Telugu Vaiṣṇavite Brahmin of Kauṇḍinya Gotra and belongs to the Śeṣam family. The progenitor of the family was Ahobala Deśika[5] and the genealogy of the author is given thus:—

AHOBILADESIKA

Rāmānujācārya | 2 | 3 | 4 | 5 | Nārāyaṇa

Rāmānujācārya — (Sitamma)
Bhaṭṭar (Two wives Ragamma and Satyabhāma).

Nārāyaṇa — Tirumalācārya.

Bhaṭṭar — Venkaṭācāri (Lakchmamma)

Venkaṭācāri — Raghunātha (Author) | Rāmānuja. | Cennubhaṭṭa.

Among the above, Tirumala and Cenubhaṭṭa are Telugu poets of note. Tirumala is the author of Aṁbarīṣôpākhyānamu, a Telugu Prabandha in 5 cantos. He is a disciple of Raghunātha Deśika, son of Cikka Bhaṭṭar, the preceptor of the famous poet, Tenāli Rāmakṛṣṇakavi (1550 A.D.). Tirumala lived in the early days of Vijayarāghavanāyaka of Tanjore (1630-1674) and the only copy of this work is available in the Tanjore Manuscripts Library (No. 1, Descriptive catalogue of Telugu Manuscripts).

Raghunātha's brother, Cennubhaṭṭa is a Dvipadakāvya writer of great merit and wrote Abhimanyukalyāṇam.[6]

The date of the author Raghunātha of the present work can be easily fixed. He is the spiritual guru of the immortal Rāma

5. Ahobala is generally used for the word Ahobila, but the word *Ahibila* is correct, and is known from the Kshetramahatmya.

6. Descriptive catalogue of Telugu Manuscripts, Vol. V, Dvipada Kāvyas Government Oriental Manuscripts Library, Madras D. 1022-23 to 1027.

Bhakta of Telugu Land Rāmadās,[7] who constructed Śrī Rāma's Temple at Bhadrācalam in the time of Abdul Hussain Tanisha of Golkonda (1659-1689). Rāmadās refers to Raghunātha Bhaṭṭa in his Dāśarathe Śataka, verse (9). Therefore the author must have lived in the second half of the 17th Century.

The following is an analysis of the work.

I Canto:

1. Description of Kukkutakroda or Calicut.
2. Kulaśekhara's father going for hunting.
3. Meeting Hariṇī and her story related in a parrot farm.
4. Seeking apatya (Progeny).

II Canto:

1. Going with his wife and making penance in a forest. (Śrī Mahāviṣṇu presents himself before the couple and gives a boon, that a son will be born to them in Kaustubhamsa and that Ila will be born as a daughter to that son).
2. Kulasekhara's birth. Triumph of Viṣṇu Bhakti apparent even from boyhood.
3. Bhaktisāra initiating young Kulaśekhara into Rāma's faith and gives the story of Rāmayana.

III. Canto:

1. Kuḷaśekhara imbibes devotion to Śrī Rāma. His experience at one stage in Rāmāyana and going in quest of Rāma. Rāma presents himself to Kulaśekhara.
2. A daughter (Ila) is born to Kulaśekhara. Vaiṣṇavites come from Śrīraṅgam and inform of the greatness of Śrī Rāma.
3. One cheli wants to go to Śrī Raṅgam and pay homage to Śrī Raṅganāyaka.
4. God Raṅganātha's visit to Calicut. Ila becomes enamoured of Raṅganayāka.

7. Popularly known as *Bhadrācala* Ramdas in Telugu literature.

IV. Canto:

The jealousy of the Ministers and hiding of the jewels. Kulaśekhara exhibits his greatness in finding the jewels—Marriage of Ila and God Raṅganayāka—Kulaśekhara becomes an Āḻvār and writes Mukundamālā and Drāviḍa Prabandha are noted.

The work is written in a lucid classical style and is one of the best Kāvyas in Modern Telugu Literature. Late Paravastu Cinnayya Sūrī, the great Grammarian and first Paṇḍit of the Madras University has quoted the work in his Telugu Dictionary (unprinted). The work deserves immediate publication.

Mukundamāla

This devotional hymn of Kulaśekhara is very popular in the Telugu Country and was often quoted by Mahāmahôpādhyāya Parvastu Veṇkaṭa Ranganāthāchārya (1822-1900) in his discourses. It is printed in Telugu characters with a gloss by Lakshmanā Chārya in 1923, and by Mannava Venkatakrishna Sarma in 1924 with a commentary. It is translated into Telugu verses by three poets (1) Yamuzāla Venkata Sastry, (2) Gade Jagannādhaswamy and (3) Pakki Appalanarasimham. All the three are printed.

All the three translators belong to the 19th century, and the earliest translation is by one Telugu Chief Sāyapa Venkatapathi in the 15th century. Only one verse from the work is available from Lakshaṇa granthās. (vide article entitled "Āndhra Rāju Kavulu" by M. Ramakrishnakavi, M.A., in the annual number of Andhra Patrica 1910).

CONSTITUTIONAL AMENDMENT IN INDIA *

by

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The Constitution (Second) Amendment Bill was introduced in Parliament on the 18th June 1952 and, after a short preliminary debate on the 8th and 9th July, has been 'circulated for the purpose of eliciting opinion thereon by the 15th October, 1952'.[1] The proposed amendment is to sub-clause (b) of clause (1) of article 82 whereby the maximum and the minimum population of a territorial constituency of the House of the People will be raised from $7\frac{1}{2}$ lakhs to $8\frac{1}{2}$ and from 5 lakhs to $6\frac{1}{2}$. It is said that the measure has become necessary because

> 'there is a considerable difference between the population of the several States as estimated and in the population as ascertained at the census of 1951.....and the census figures are higher in all cases, and in view of the overall limit of 500 members prescribed in article 81 (1) (b) as it now stands'.[2]

The Government of India therefore proposes to keep the maximum number of members of the House of the People at 500 and has proposed to make the size of the constituency larger by means of a constitutional amendment. Reading all the clauses of article 81 one must conclude that the makers of the Constitution either believed that that the population of India will never exceed 375 millions which is 500 times 750,000 *or* thought if such increase occurred the constitution will be suitably amended. The 1951 census revealed a total population of nearly 357 millions[3] which demands under article 81 a minimum of 476 members while we now have under the Representation of the People Act (1950) 496 seats. Thus there is no present difficulty, but if the usual rate of increase occurs, after the next census article 81 will have to be amended. The statement of Objects and Reasons of the Amendment Bill does not reveal any anxiety about the future, nor did the Minister for Law raise the issue when introducing the Bill. It must be inferred therefore that the incompatibility of sub-clauses (a) and (b) of the first clause of article 81 which will be manifest in 1961 did not occur to government or it was not considered necessary to refer to it. The real difficulty in regard to article 81 arises from the fact that it limits at the same time the total number of representatives and the quota of population per member when the size of the population is not amenable to legislation. Therefore one of the two figures should be variable in relation to the other if we are to avoid periodic amendment of the Constitution, and this first amendment of this article might have been designed to obviate all further amendment.

The remedy proposed by the amendment however does not remove the difficulty. Nor is it manifestly essential today because our population is still (by the 1951 figures) short of the limit by 18 millions; and it will not save the situation when the population exceeds 425 millions, as it may after 1961. Let us suppose, on the other hand, that we keep the maximum of one seat per 750,000 of the population and let the total number of seats vary according to the census, even when our population was 500 millions we shall not have more than 667 Representatives. It may perhaps be allowed that 667 is not a very large number unless, indeed, 500 is held the largest number that any House of Representatives should have. The views of the Government of India and Parliament on the question will not be known till the debate on the Bill is concluded, but this narrative provides a background for a consideration of constitutional amendment in India. A Bill is introduced in the House of Representatives for a brief alteration of certain figures in a sub-clause of the Constitution Act, and then it goes through the same stages as any other Bill; only in cases of constitutional amendment the required majority is two-thirds of those present and voting and an absolute majority of that house. The First Amendment Bill was introduced in Parliament, then a single chamber, on the 12th May, 1951, debated on the 16th and 17th and referred to a Select Committee on the 18th May; and as it emerged from the Committee was taken up on the 29th May and debated for three days and accepted. Routine legislative procedure quickly followed and the amendments became effective on the 18th June. That this unusual speed in constitutional amendment required some justification is clear in the opening words of the Prime Minister's speech in moving that the Bill as reported by the Select Committee be taken into consideration

* T. R. Venkatarama Sastri Endowment Lecture (1951), read to the South Indian National Association and Ranade Library on August 29, 1952.

1. Debates of Parliament 9th July 1952.
2. Constitution (Second) Amendment Bill, 1952; Statement of Objects and Reasons.
3. Keesing's Contemporary Archives (1951) 11455 A.

> "The Select Committee considered this matter for six days, and yet perhaps to say that it considered it for six days does not exactly convey the right impression, because the amount of time and thought it gave to it probably represented much more than six days".[4]

But the procedure then followed is allowed by the Constitution and the Supreme Court has held that the procedure in regard to amendments under article 368 of the Constitution is the same as ordinary legislative procedure except that a special majority is required.[5] The only question still open is, if an amendment passed with the required majority is one of the Houses does not secure the needed majority in the other it is dropped or referred to a joint session of both houses. Dr. M. P. Sharma says

> "The Constitution lays down no procedure for resolving such a deadlock....the only thing possible is to abandon the disputed amendment".[6]

He concludes therefore that in the matter of constitutional amendment the Council of States has equal power with the House of the People. He also hold that the procedure of a joint session "does not apparently apply to differences over constitutional amendments".[7] This is not a practical problem today when a political party has obtained nearly 75% of the seats in the Lower House[8] and 69% in the Upper House[9] and legislative majorities in more than half the number of Part A and Part B States. It is not impossible to contend that if the passage of a constitutional amendment through Parliament is analogous to that of an ordinary bill, there should be similar provision for ending deadlocks. But the language of Article 368 as it now stands is unlikely to be construed by the courts as allowing the joint sessions provided for legislative deadlocks in Article 108 especially because the joint session decides by a majority of those present and voting and not by an absolute majority. An amendment making suitable provision for resolving deadlocks over changes in the Constitution is clearly necessary if it is desired to take away the veto of the

4. Parliamentary Debates Part II Vol. XII, No. 13 Col. 9612, 9613.
5. Shankari Prasad V. Union of India. S. C. Petn. 382 of 1951.
6. Sharma, M.P.: The Government of the Indian Republic 1951. p. 227.
7. Ibid. p. 228.
8. Keesing's Contemporary Archives (1951) Col. 12082.
9. Ibid. Col. 12134.

Upper House on the assumption that the political complexion of two-thirds of the membership in each house may not always be the same. This line of reasoning leads one straight into the strategy and tactics of constitutional amendment in a modern democratic State and illustrates the inadequacy of academic distinctions between "rigid" and "flexible" constitutions. Constitutions yield and are malleable at those points where pressure is exerted by persons who lead parties in power and prove rigid and frustrating to those who cannot build up the necessary pressure. The character of a constitution must therefore be held to be a consequence of design, not an accident.

An analysis of the amendments made in our Constitution in 1951 shows that these were dictated by certain exigencies created by court decisions bearing on certain articles of the Chapter on Fundamental Rights. The Constitution came into force on 26th January 1950 and it contains an article, No. 13, which declared all laws in force inconsistent with the Chapter on Fundamental rights void to the extent of such inconsistency. Subsequent articles conferred various freedoms upon the citizen. At the same time there is a Chapter on Directive Principles of State Policy which are not justifiable, but nevertheless indicate plainly the duties of governments on several social and economic questions. And governments all over India found that some laws, old and new, were declared void or *ultra vires* by the courts, while the chapter on Fundamental Rights effectively prevented the execution of the directive principles. It was also clear from the judgments of the courts that because our Constitution is elaborate, minute and explicit in all its provisions it was not open to the Judiciary to invoke in the manner of American judges the doctrine of 'implicit powers' or 'police power' in order to save the impugned laws or assist the harassed executive. Dr. Ambedkar complained about the attitude of the Supreme Court in the debate[10] on the Amendment Bill and both he and the Prime Minister[11] made their strongest case on the ground that the directive principles should modify the fundamental rights. Pandit Nehru said "I am not changing the Constitution by an iota; I am indeed making it stronger. I am merely giving effect to the real intentions of the framers of the Constitution and to the wording of the Constitution, unless it is interpreted in a narrow and legal-

10. Parliamentary Debates Part II, Vol. XII No. 4 Col. 9012 and 9013.
11. Ibid. Cols. 9082 and 9083.

istic way".[12] The Fundamental Rights had been in the traditional way conceived in terms of the individual, while the Directive Principles had been shaped by modern ideologies which treat of men as groups and masses. The entire debate on the First Amendment Bill is a most illuminating commentary on this conflict of principles. In the event, fundamental rights were modified by amendments —

(i) to Articles 15 and 29 which enables the State to discriminate between persons to make special provision for "socially and educationally backward classes";[13]

(ii) to Article 19 with retrospective effect reviving several Emergency and Public Order Acts, restricting freedom of speech, widening the scope of the expression "security of the State" practically nullifying clause (1) of Article 13 and incidentally by adding to clause (6) of Article 19 a provision whereby the State cannot be prevented from entering trade or industry on the ground that it infringes the individual's rights;

(iii) to Article 31 diminishing the Right to Property by saving 13 State Acts dealing with zamindari and other estates and permitting further State legislation on the subject with the assent of the President, and excluding, in the words of Dr. Ambedkar, "the two articles on the Fundamental Rights relating to compensation and discrimination with regard to this land question",[14]

Other Amendments also made then were

(i) to Article 85 removing the difficulty of complying with the original provision of two sessions a year in case Parliament sat continuously for more than six months;

(ii) to Article 87 whereby the President addresses the Parliament only at the beginning of the first session after a general election and not at the commencement of every new session;

(iii) to Article 341 and 342 by which the President's power of scheduling castes and tribes is extended to Part C States;

12. Col. 9083.
13. Constitution of India, Article 15 (4).
14. Parliamentary Debates Vol. XII, No. 4 Col. 9025.

(iv) to Article 372 extending the President's power of adapting or modifying a law to bring it in conformity with the Constitution by one more year; and

(v) to Article 376 providing that non-Indians already serving as judges of the High Courts shall not be debarred from appointment to other High Courts or as Chief Justices.

The amendments to articles 15, 19 and 31 modify the scope and nature of the Fundamental Rights originally declared, besides indirectly affecting the scope of Articles 13, 14 and 29. But there is left a large field of judicial review and the insertion of the qualifying word 'reasonable' in clause (2) of Article 19, in fact, extends it in regard to press laws and freedom of speech. While fundamental rights and judicial review may be matters of great moment, and economic equality and social security may be matters of greater moment, a discussion of constitutional amendment which ignores these can still be of use. The Constitution of India allows a simple majority in the two Houses of Parliament to determine the political map of the country, to admit new States and alter the boundaries of the old,[15] and in all matters of citizenship there is no constitutional limitation on the power of Parliament;[16] in these vital fields our Parliament has sovereign constituent powers. The consent of half the number of the States and special majorities in Parliament are required only for altering the distribution of legislative powers,[17] the representation of States in Parliament,[18] the definition of the executive power of the Union and the States,[19] the organisation and procedure of the Supreme Court and the High Courts,[20] the manner of electing of the President,[21] and finally the constitutional provision prescribing this limitation on Parliament.[22] All other articles of the Constitution can be amended by a two-thirds majority of those present and voting in each House of Parliament, which majority shall be greater than half the total membership. Thus there is no provision of our Constitution which cannot be amended, only some are by Parliament by simple majority vote, most by a larger majority,

15. Constitution of India, Article 4.
16. Ibid. Articles 5 to 11.
17. Ibid Article 249—254; schedule 7.
18. Ibid.
19. Ibid. Articles 73 and 162.
20. Ibid. Part V Ch. IV. Part VI Chap. v, Article 241
21. Ibid. Articles 54 and 55.
22. Ibid. Article 368.

and a very few provision are safeguarded by the further requirement of ratification by the legislatures of half the States. Commenting on this arrangement Professor Wheare observes, "This variety in the amending powers is wise, but it is rarely found ".[23] The law governing the formal amendment of our Constitution according to him strikes 'a good balance' in that it does not impose a uniform rigid procedure for constitutional change. Sir Ivor Jennings on the other hand thought the Constitution "will not be easy to amend " and is " of a very rigid character ".[24] These are academic commentators. Turning to the one person on whom more than any one else the real future of the Constitution depends, we get the following dicta; "While we want to make this Constitution to be as solid and permanent as we can make it, there is no permanence in Constitutions. There should be a certain flexibility.........What we may do today may not be wholely applicable tomorrow ".[25] That was said when the Constituent Assembly was at the final stage of its labours. Again, during the Parliamentary debates on the First Amendment Bill he said: "Because we live in these rapidly changing times we cannot wait for that slow process (of judicial interpretation and development of conventions which other countries with the written constitutions have gone through like the United States of America). We have to give a slightly different shape to the written word. In effect we do what in normal course judicial interpretation might have done and practically would have done and we come up before this House for that purpose ".[26] Further he has said, "We in this country could not obviously adopt the British way of an unwritten Constitution. We cannot have that especially in a big country with numerous autonomous Provinces and States. Nevertheless the other extreme of a rigid Constitution is a dangerous one, which might lead to the breaking up of that Constitution when it walks away from reality ".[27] The latest expression of his view on this question was on the 24th July 1952 when he told Press correspondents: "Speaking with all deference to the Indian Constitution, I should like to change it now......It is an excellent Constitution, but in a huge Constitution like this, there

23. Wheare, K. C.: Modern Constitutions, p. 143.

24. Jennings, Sir Ivor: The Indian Constitution in The Manchester Guardian Weekly, Jan. 26, 1950.

25. Quoted in Durga Das Basu: Commentary on the Constitution of India, p. 836.

26. Parliamentary Debates Part II, 16th May 1951 Col. 8818.

27. Ibid. 29 May 1951 Col. 9626.

are many things that, after some experience, seem to us to be worth changing ".[28] He has thus always urged that there was no special sanctity about the provisions of the Constitution which should change to meet the daily changing scene. Other political parties have on occasion adopted the rôle of the defenders of the Constitution against changes, especially change initiated by the Congress party; but many of them had before the general elections put in their manifestoes promises to amend the Constitution very radically if they should be voted to power. Therefore it is reasonable to conclude (1) that there is no disposition in any quarter in this country to venerate the Constitution as a repository of a higher law which by limiting the scope of legislative and executive authority, conserves some basic principles of society, (2) that governments and people seem to regard the Rule of Law as tolerable only as long as it does not stand in the way of the policies and programmes which they cherish, (3) that there is virtual unanimity on the principle that the Constitution should be elastic enough to permit the development of government in the desired direction and at the same time it should be rigid enough to thwart any movement in the opposite way. These are contradictory desires and sentiments which cannot be harmonised in any constitutional structure; but when a political party has obtained out of 44½% of the votes 75% of the seats in the House of the People and out of 42% of the votes over 68% of all seats in the State Assemblies[29] the contradictions are not apparent, especially when it is realised that the party has, for one generation, not been a party in the usual political sense of the term, but has been identified with the nation itself.

Democratic constitutions require two or more political parties and the British system ensures that they shall be only two. Our circumstances on the other hand almost enforce a single party system for these reasons:

1. The people are not divided more or less evenly on basic social and economic issues which prevents the development of two parties on British or American lines. Agreement on the inviolability of the rule of law and acceptance of government by territorial representation are not rooted in our political experience yet.

28. Indian Express, Madras, 25th July 1952.

29. Keesing's Contemporary Archives (1952) 12082.

2. Small political groups cannot grow into a number of parties because our electoral system is based on large territorial single-member constituencies and there is no proportional representation. The small parties cannot be returned in sufficient strength collectively to help the development of a French pattern of parliamentary government. Besides, the extreme concentration of power at the Centre achieved implicitly and explicitly by the Constitution directs all political attention and endeavour towards the capture of power at Delhi, which implies in modern times a colossal machine which small parties can hardly hope to build.

3. Assuming that a party other than the one now in power grew in strength it should still be strong enough to command the two-thirds majorities in Parliament and half the State Assemblies if it is to do anything significantly different from its predecessor. And it is a question if having attained that degree of political power it would relax and directly or indirectly assist its opponents to get back to power, thus consciously and deliberately incubating a two-party system as part of its mission.

4. The practice of the party in power, which must deeply influence the structure and policies of other parties, is not conducive to the growth of party government because the party for long a total national movement against the foreign government of the country has been unable to choose a particular set of coherent principles as its speciality but continues its claim to sponsor all and every interest and idea that can arise in the country as the custodian and guarantor of the national well-being wholly and in detail.

5. Precedents so far established, particularly in the context of an assembly which was simultaneously a constituent assembly and a uni-cameral national parliament and later in the national parliament passing constitutional amendments in the manner provided, are all in favour of a novel type of parliamentary rule where the government has to have not only a majority for making law but also the majority for changing the constitution.

It is true that adult suffrage has been established and the voter can change the government, but no tradition has been established by which a change of government need not involve a change of constitution. It is because constituent and legislative functions have been confused or identified that a party manifesto has been put into the constitution first as the Directive Principles and

subsequently in part written into the Constitution by the First Amendment Act. If, on the contrary, the Constitution had been bare and simple, judicial interpretation would have slowly adapted it to the needs of the times; but the delay could not be brooked, nor the suggestion that judges should share the legislative function of the sovereign representatives of the people. The consequence is our Constitution is an elaborate code for the government of India on the lines of such legislation as the British parliament formerly made for the purpose. But it has not been realised that a sovereign constituent assembly fashioning a Constitution for a new republic faced a different task and was not a perpetual authority like the British Parliament. When it emerged the Constitution seemed to experts like Jennings to be "a permanent arrangement designed to last for all time ".[30] It has however been changed immediately afterwards; more changes are impending. The changes are averred to be not 'changes' but elucidations of its true nature.[31] Experience of government has taught the need for amendment and the change was essential for day-today government and was urgent. Thus it is indisputable that our Constitution favours a political system where, because it must be able to change the constitution if it is to govern according to its policies, only a political party commanding the large majority in Parliament which will give it constituent powers can successfully undertake the business and responsibility of government. Such a political system tends to foster totalitarian aims, techniques and philosophies, to undermine democracy, individual liberty and the rule of law, to reconcile politically-minded persons to one-party rule whether of the right or the left. Assuming that these tendencies are undesirable and ought to be checked, assuming further that a stable two-party system of the British model affords the best means of social progress, our Constitution can easily be changed to make it fully flexible by enabling Parliament by simple majority to amend any article. The difficulties raised by a declaration of Fundamental Rights long noted elsewhere have also been experienced here and no one can take serious exception to putting the surviving Rights entirely at the mercy of Parliament. As regards the federal nature of the Constitution, the autonomy of the consti-

30. Jennings, Sir Ivor, loc. cit. note 24 above.

31. Nehru, Pandit Jawaharlal: 'the amendments we sought to put in, however worded, were really meant more to amplify and clarify than to make a change in any part of the Constitution'. Parliamentary Debates Part II Vol. XII, No. 13, Col. 9614.

tuent units is so feeble in law and fact that there can be no reasonable objection to the final increase in the Constituent power of the Indian Parliament. A fully sovereign parliament governing India through a Cabinet answerable to it will become a great national forum of constitutional democracy and a bulwark against reaction no less than revolution. The opportunity for a final amendment of this kind will not, however, be open at all times.

PUNNĀTĀ COUNTRY

by

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The Ganga King Durvanīti whose period of rule has been now placed between A. D. 610 and 655 is said to have conquered Puṇṇāṭā and is celebrated in the inscriptions of the dynasty as the "Lord of Puṇṇāṭā" described as the "kingdom of his mother, the Princess of Puṇṇāṭā". The first mention of Durvanīti's title, "Lord of the whole of Puṇṇāṭā Paṇṇāṭā" does not, however, occur earlier than his 20th regnal year, when his Uttanūr plates make mention of it for the first time.[1] This leaves us to conclude that the conquest of this region was not easy even for a warrior-king like Durvanīti and that it took a long time to be completed, seeing that the first mention of his connection with this territory is early in his reign. The Komāralingam copper plates of Ravidattā[2] indeed seem to indicate Durvanīti's occupation of the Puṇṇāṭā kingdom by positing a break in the regular line of Puṇṇāṭā rulers between Puṇṇāṭā Rājā (name not mentioned) and Ravidattā, the donor of the plates. Further, in the very same record the said Puṇṇāṭā Rājā is definitely mentioned as the son of Skandavarman, the maternal grandfather of Durvanīti. Whether there was a natural break in succession after the death of Puṇṇāṭā Rājā, who was the uncle of Durvanīti, or the latter forced himself on the throne of the kingdom it is not possible to say with certainty.

These are problems that demand attention at the hands of the historical investigator. But more than these the first question that demands an answer is the question of the identification of the Puṇṇāṭā Kingdom. The Komāralingam plates referred to above records the grant of the village of Pangisōgē by Ravidatta while in "his victorious camp at Kīrtipurā or Kitthipurā"—a place generally identified in the southern portion of modern Mysore. Still this cannot be taken as sufficient evidence in determining the location of the kingdom.

1. Mysore Archaeological Report (M.A.R.), 1916.
2. I.A., XVIII, p. 362.

In the first place, Kīrtipurā was not the capital of Puṇṇāṭā, as has been often assumed by writers, but only "a camp in the victorious march of Ravidattá". It is quite possible that he had undertaken a campaign in an attempt to strengthen his possessions, which had suffered during the occupation of Durvanīti. The mention of various grants made on the occasion from Kīrtipurā of places like Kōlūr, Kodamuku etc., "to persons to whom they belonged", as the grant clearly mentions, only confirms this conclusion.

Further, the copper plates of Ravidattá are obtained from the village of Komāralingam, a village in the Taluk of Udumalpet in the modern district of Coimbatore. Ptolemy, it must be remembered, designates a country called 'Poṇṇūtā' and describes it as "a land of beryls", sea-green stones for which only the Kāngayam area of this district is famous in all India and until recently in all the world. It is also noteworthy that the donor of the grant, Ravidattá, expressly states that he is making it with the permission of the Chēramān:

> "While his Ravidatta's, victorious camp is at the town of Kitthipurā, which is the best of towns, with the permission of Chērammā .... the village named Pungisōge in the east central dēśā in the Kudagūr nādu which is in the Punnaduvishayā has been granted".[3]

As has been already said, besides Pungisōge several villages like Kōlūr, Kodamuku, Tanagundūr and Elagōvanūr are mentioned as coming under other grants made on the same occasion. Though definite identification of these various places cannot be ventured now, it is clear that these were mostly Canarese villages. It is also clear that most if not all of these places abutted on the Kongu frontier. The name Elagōvanūr appears as a boundary with reference to these grants;[4] and with reference to the old name of modern Coimbatore, which is mentioned even in late Cola Inscriptions of the XII century as Kōvanputhūr,[5] the name Elagōvanūr suggests the possibility of a location near Coimbatore, if not Coimbatore itself.

That Ravidattá was a feudatory of the Cēra sovereign of the time is put beyond doubt by the permission he is said to have obtained from the Chērammā (n) for issuing the grants referred to.

3. Komāralingam plates, lines 11 ff.
4. Komāralingaṃ plates, line 23.
5. K. A. N. Sastri, Colas, Vol. II.

From all these considerations it seems but natural to conclude that the Puṇṇāṭā Kingdom must have been a small state carved out from parts of Mysore in its southern part and north Coimbatore region during the period of the weak rule of the Gangas over Kongu, possibly in the period of numerous regnal changes that occurred after the death of Vishnugōpā and even during the last days of his rule. This period seems to have offered a golden opportunity for Cērā revival under rulers who were determined to recoup their glory lost before the conquering forces of the Raṭṭās under Tiruvikrama. Prof. Wilson in his Catalogue of Mackenzie Mss. collects an unbroken line of 26 rulers of the Cērā line, the last of whom is brought under the sway of the Colā Ādityā. Calculating upwards he places the first ruler roughly at the commencement of the V century A.D.[6] Possibly the first ruler of Prof. Wilson's Catalogue was the ruler of the revived Cērā dynasty. Though silence is no argument, the omission of the Cērā name in all the victories detailed in the inscriptions of the various Ganga rulers from Kongani I down to Durvanīti is very significant. Even the *Kongudeśarājākkal*, which makes the distinction between *Kēralā* and *Malayālā* in its record of the conquest of Tiruvikrama, does not mention this region again until we come to the days of Durvanīti, when Kēralā is mentioned as first among his numerous conquests.[7]

A few inscriptions from Veḷḷalūr near Coimbatore give the names of two Cērā rulers, Kōkkandan Viranārāyanā and Kokkandan Ravikōdan, who style themselves "sovereign jewels of the luni-solar race".[8] Unfortunately there is no indication about their date, except the fact that the letters of the records are old archai characters. On the other hand, the style assumed by these king "jewels of the luni-solar race", clearly indicates the Cērā-Pāndy connection and more particularly the fact that these kings wer Pāndyan on their mothers' side. The effective appearance of th Pāndyā in Kongu first occurs only in the VII century, at abou the same time when according to the evidence discussed here th Cērā makes his own name felt in the politics of Kongu. The fir mention of the defeat Durvanīti effected on the Pāndyā and th Cērā at the same time as referred to in the Tamil Chronicle abov referred to,

6. Wilson; Catalogue, Intro. pp. xcii-xciv.
7. MJLS., XIV, p. 9.
8. ARE., *1910*, pp. *147-'48*.

"*He conquered the Kēralā, Pāndyā, Cōlā*",

must have taken place also in the first part of the VII century, to which date the reign of this Ganga King is generally referred.

These points of information help us to posit:

(a) that the Cērās had come on a decline and finally into eclipse from the time of the Ratta conquest effected by Tiruvikrama in the early years of the V century.

(b) that the Ceras made attempts to revive in the period of numerous regnal changes in Kongu roughly between the years 525 and 610 A.D.

(c) that the line of rulers indicated in the Vellalūr inscription belonged to the last years of this period, when the Cērās appear to have fairly settled down in Kongu.

(d) that the line of rulers mentioned in the Komāralingam records were Cērā feudatories.

From these deductions the identification of the Puṇṇāṭā country seems very plausible indeed. It must have been a kingdom subordinate to the Cērās comprising parts of modern Coorg and Coimbatore. Ptolemy's description of Puṇṇāṭā as "a land of beryls" seems definitely to point to the region of Kāngayam in Coimbatore District as lying within the Kingdom of Puṇṇāṭā. The Mercārā copper plates refer to Puṇṇāṭā as "a ten-thousand country"; and, as Mr. L. Rice rightly contends, it must be the same as the later-day "Padi-nādu" (lit. "the ten-country") mentioned in the Yelāndūr inscription of the year A.D. 1654.[9] In locating this place or region the above mentioned Yēlandūr record clearly mentions a place called 'Tārāpurā' (which resembles most closely the name of Dhārāpuram, a modern town in Coimbatore District) as lying in the S.E. of the kingdom.[10] The fact that equidistant to both Kāngayam and Dhārāpuram, lying within a distance of six miles from each place, is the place called to this day Padiyūr, the centre of the far-famed Kāngayam beryls, must be taken as giving a strong confirmation to the view that the Kingdom of Puṇṇāṭā certainly comprised portions atleast of the modern district of Coimbatore including Padiyūr, Kāngayam and Dhārāpuram. That the territory of Coorg was included in this Kingdom is borne out equally clearly by the mention of

9. Mysore Inss. pp. 283, 334.
10. op. cit., p. 334.

Pungisōge, referred to as a Coorg village in an inscription of Rājarāja, who confers in this record the title of Kongālvā on a chieftain who distinguished himself at the battle, which is said to have taken place at this spot.[11]

That a kingdom consisting of parts of Coorg, and the district of Coimbatore could have been brought together to form a unit is not impossible. On the other hand, there can be no doubt that for long during the time referred to here Kāngayam and S. Mysore were in close communion. Notwithstanding all that the history of Mysore and Kongu has to reveal, we may here just refer to what Col. Wilks, the celebrated historian of Mysore, says *a propos* of this discussion:

> "In the southern part of Mysore the Tamil language is at this day named the Kāngee from being best known to them as the language of the people of Kāngayam".[12]

Further, the very name Kāngayam bears obvious testimony to its Ganga connections. On the other side, the same Wilks bears testimony to the fact that for some time the Cērā King had complete mastery over this region, when he says:

> "Chēran united Kāngiam and Sālem to the dominions of Keralā or Malabār".[13]

In conclusion we may state that at some time during the period specified above the Cērā King stole a mastery over a portion of Kongu, Coorg and S. Mysore and his dominion extended over all the region as far south as atleast Kāngayam or Dhārāpuram. This was the region of Puṇṇāṭā referred to among the conquests of Durvanīti. When seen from this background even the somewhat curious name of Puṇṇāṭā can be explained. It seems to be a corruption of an original name Ponnādu, literally meaning" a country of gold". The region here indicated as having been included in the country that went by this name was really famous in ancient times for its large gold deposits; and the late Tamil work *Madurai Kalambakam* refers to the gold of Kongu as gold of a special kind (*Kongurai-pon*).

11. Sastri; Colas, Vol. I.
12. Wilks; Mysore, p. 4, F.N. 2.
13. Wilks: op. cit.

AMERICAN INFLUENCE IN INDIAN CONSTITUTION MAKING

by

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The members of the Indian Constituent Assembly who were called upon to discuss and to vote the provisions of a new legal framework had before them several constitutional patterns which were of valuable guidance in their responsible task. It was obvious that they could not have gone back to Indian tradition of government as known in the sub-Continent before British rule, and that they had to choose between some of the most outstanding models of modern democratic regimes as worked out and applied in the West. The English constitutional pattern was the first to be considered, as Indian politicians and lawyers were most familiar with its principles. But it was also *a limine* obvious that certain deviations from this pattern had to be allowed as constitutional planning had to follow the new political reality. First of all the Indian Constitution, unlike the English one, was to be written down and not left entirely to conventions; secondly it had to be the Constitution of a Federation. In both points the English pattern could not be applicable, and American influence therefore imposed itself from the first moment. Simultaneously with its influence came its inherent limitations. The United States were the first to adopt a modern written and Federal Constitution. One of the fundamentals of this great legal framework was the doctrine of complete separation of powers which in spite of a tradition of more than one hundred and fifty years has not passed its practical test in every respect. Constitutional lawyers and political scientists are familiar with its origin. It is fair to say that it sprang, to some extent, from misunderstanding. Montesquieu, its author, connected the doctrine with English constitutional practice at a time when the separation of the Executive from the Legislature was on the point of being abandoned in England. But as the doctrine outside England had early taken dogmatic shape, its influence on the American Constitution makers had become decisive, and had led to the adoption of the Presidential regime in which Executive and Legislature are strictly separated from each other. It might not be out of place to recall here that this misunderstanding was not the only one

which occurred across the English Channel as many years later Dicey fell a victim to misinterpretation of French Constitutional practice, particularly in his exposition of French Administrative Justice, a mistake which has but recently been corrected in English legal publications.[1]

Thus one of the main problems of the Indian Constitution makers was connected with the conflict between the English constitutional pattern based on responsible Government, and the need for a written Federal Constitution which, if adopted in American shape would have brought the Presidential regime to the forefront. Solutions were sought, inter alia in the type of compromise made by some of the Commonwealth countries such as Canada and Australia, which adopted, together with Federalism, responsible Government. Problems were settled in the Constituent Assembly not without a prolonged exchange of views, and the advocates of the Presidential regime had full opportunity to display its advantages to the Assembly.

The issue of Presidential versus Parliamentary regime first came up for discussion in relation to local States when the Report on the principles of a Model Provincial Constitution was considered. Originally an elected Governor was visualised for local States, a conception following, with certain changes, the American pattern. However the view prevailed finally, that the Governor should neither be elected nor be the real head of the State, and that the local Ministry led by a Chief Minister should be responsible to the appropriate Legislature. It followed that the Ministers had to be members of the Legislature, and so the British type of government as embodied in the old Government of India Acts remained *mutatis mutandis* in the picture. The American type of Governor with extensive powers gave way to Parliamentary Government in which the Governor appears, with some exceptions, as the nominal head of the local State only.[2]

However the advocates of the Presidential regime resumed the battle when the provisions relating to Central Government came under discussion. Sri G. K. Vijayavargiya from Gwalior State, in a significant speech, asked for the election of the President of the Republic directly by the people, and not by Legis-

1. The Law of the Constitution by A. V. Dicey (9th Edition), 1952, p. 392 seq.

2. Constituent Assembly Debates (C.A.D.), Vol. IV, pp. 588, 592, 632, 636, 642, 656.

latures (Central and Local).[3] He was supported by Prof. S. Saxena who relied on the original provision of election of Governors on the basis of adult suffrage in Local States and advocated the adoption of the same method at the Centre.[4] It was pointed out that such direct elections of the President by the people could give him the necessary dignity and prestige.[5] Prime Minister Nehru intervened however against the adoption of the American pattern. He opposed Presidential elections by universal suffrage and following the resolutions of the Union Powers Committee declared himself against the Presidential type of government.[6] This intervention of the Prime Minister did not remain unopposed. Opposition was based on partly sentimental and partly objective grounds. Hussain Imam contended that as British rule in India was dethroned British Institutions should be dethroned too. The American President, he said, is elected by the votes of the whole Nation. Under the Parliamentary regime the Prime Minister is the real Head of the Executive, but he is elected from his own constituency only which is a serious drawback. The speaker also pointed out that President Roosevelt appointed during the war, two members of the Opposition to his Cabinet.[7] So a type of temporary quasi coalition was possible under the Presidential regime in emergency. If the British pattern was adopted the danger of unstable French coalition governments may appear in Indian conditions. All these debates took place before the transfer of power to India. On 14th August 1947, the date of actual transfer, the present Vice-President of India Dr. Radhakrishnan declared that in distinction to other Colonial Powers who cling to their possessions, "the political sagacity and courage of the British people" cannot be but admired. The whole House cheered.[8] British rule had terminated, but there was no atmosphere of banning British Institutions *en bloc*.

However the battle for the Presidential regime was not at an end; it was again resumed a year later in the Assembly. On 10th December 1948 the pros and cons of the Presidential and Parliamentary types of government were discussed. It was pointed out that India needs a strong centre of Power for the creation of which

3. C.A.D., Vol. IV. p. 819.
4. C.A.D., Vol. IV, p. 826.
5. C.A.D., Vol. IV, p. 826.
6. C.A.D., Vol. IV, pp. 734, 846, 859, 907, 916.
7. C.A.D., Vol. IV, pp. 916, 917.
8. C.A.D., Vol. V, p. 6.

Responsible Government is more suitable as it is based on intimate co-operation between Executive and Legislature.[9] The attack against this view came from Prof. K. T. Shah who advocated complete separation of powers as known in the U.S. He said it would best secure the operation of the rule of law, civil liberties and real democracy.[10] Prof. S. Saxena supported the speaker.[11] Their arguments were heavily criticised by Dr. Ambedkar, later Minister of Law, who said that the doctrine of separation of powers in the Indian Constitution should be limited to the separation of the Judiciary from the Executive. As to the separation of the Legislature from the Executive he remarked that it is by now considered undesirable by many politicians and writers in the United States. Ministers, he said, should be introduced into Parliament, they supply initiative to the Legislature. The President of India should not become the real Head of the State, as in the United States, but should act on the advice of a Central Ministry which should be binding upon him.[12] After Dr. Ambedkar, Sir Alladi Krishnaswamy Aiyar remarked that the American doctrine of separation of powers had been carried too far to yield useful results.[13] Thus the opinion of two outstanding lawyers, together with that of the Prime Minister seemed to settle the issue.

The final outcome of the debates of the Assembly on this vital problem is well known. Responsible Government of the British type was adopted and embodied in the relevant provisions of the Constitution.[14] However, it must be emphasized that the debates were far from covering all the essential aspects of the problem. We have to remember that the elections of the United States President are always a contention between two political parties; he can hardly be a coalition President.[15] Whereas Responsible Government can operate in conditions of one party, two party, or multi-party systems, there is no such choice under the Presidential regime. Apart from its other advantages or disadvantages the Presidential regime is best suited to avoid the "horror" of coalition governments. The word horror must enjoy the privilege of

9. Proceedings of the Constituent Assembly (A. N. Khosla). P.C.A. Vol. 2, p. 217.
10. P.C.A., Vol. 2, p. 218.
11. P.C.A., Vol. 2, p. 218.
12. P.C.A., Vol. 2, pp. 218, 219.
13. P.C.A., Vol. 2, p. 220.
14. The Constitution of India, art. 52-78.
15. Federal Government by K. C. Wheare, 1951, p. 89.

inverted comas if French Constitutional practice is considered in a detached way without a priori bias against its principles.[16] India has at the moment a one party system, and there is no prospect for the formation of one consolidated opposition. Quite to the contrary, party after party comes into being, and though there is no threat of coalition government at the Centre, in some of the Local States attempts have already been made to form coalition governments and in one of them it was actually formed (Pepsu). A great number of Indian Politicians and lawyers consider coalition governments a real menace. If so, the question arises whether they were aware of the remedies at the time of the debates in the Constituent Assembly. One of the remedies would have been the adoption of a Presidential regime and of local Ministries not responsible to local Legislatures but to Governors. Whether such a regime is suitable for India is another question. However the opposition against responsible government should not have omitted the argument. In this respect the debates in the Constituent Assembly have not exhausted the matter.[17]

The final adoption of Parliamentary Government together with Federalism made the Constitution makers resort to the Canadian as well as Australian patterns. The first of these two influences predominated. In the matter of division of Legislative power between Centre and Local States, the Canadian example was followed according to which Local Legislative Power is defined and the residue of Power goes to the Centre. This meant the abandonment of the U.S. and Australian patterns according to which the residue of Legislative Power goes to the Local States. The latter mean more Federalism and less Centralisation. The Canadian model of division of Power adopted by India means more Centralisation and less Federalism. The relevant provisions of the Indian Constitution gave full expression to the policy of Indian Congress which wanted to create a strong Central Government.[18]

16. C.A.D., Vol. IV. pp. 635, 916-7. As to Coalition Governments in the U. K., see Cabinet Government by Sir Ivor Jennings 1951 pp. 245-8. As to Coalition Governments in India see Prof. R. Bhaskaran's view on the subject, The Hindu, 15-2-1952.

17. It seems also doubtful whether the Constituent Assembly was really aware of the fact that Presidential Elections conducted in the American way might have affected the monopolistic position of Congress and resulted in weaker Government at the Centre with more decentralisation and federalism.

18. See art. 248 of the Constitution of India.

American influence came into the picture in several other issues : One of the most controversial problems in the Constituent Assembly was the matter of personal liberty. In English Law personal liberty is not guaranteed constitutionally, but is derived from the ordinary law of the land. One of its most outstanding features is the remedial approach in the matter which allows the individual to take advantage of the Institution of Habeas Corpus. Whenever his personal liberty is infringed he can ask the High Court of Justice for a Writ of Habeas Corpus, and if preventive detention is applied to him by an Administrative Officer the Court (except in case of war time emergency) will never refrain from going into the sufficiency of grounds of detention.[19] It is regrettable that in spite of the adoption of the Institution of Habeas Corpus by the Indian Constitution, the Supreme Court considering successive Preventive Detention Acts has declared that in refraining from the examination of the sufficiency of grounds of detention it has followed English Case-law.[20] The Supreme Court was perfectly entitled to interpret the Constitution as it seemed right to the Judges, but to rely on English war-time cases such as Liversidge *versus* Anderson, and to apply them to so-called Peace-time emergency conditions, and to say at the same time that English Law has been followed, is to assume the power of creating a new Habeas Corpus Law, a venture in which alone an ill-fated English King engaged three centuries ago.[21] We may wonder whether the Indian Constitution makers have visualised such a state of affairs. When they adopted the Fundamental Rights based on the American Bill of Rights they showed considerable foresight in asking for the adoption of the due process of law clause which was however opposed by the high authorities of the Indian Congress.

The due process of law clause is of American origin, its interpretation in practice is one of the greatest achievements of the Judges of the U.S. Supreme Court.[22] The clause is based on Amendment V and XIV of the Constitution. The American Constitution makers first conceived liberty in the same way as English

19. See Liversidge v. Anderson, (1942), A.C., 206.

20. See A. K. Gopalan v. the State 1951 S.C.J. 174 and the Supreme Court as a Habeas Corpus Bench by C. H. A. Alexander, Madras University Journal, January 1952.

21. See Darnel's case v Cases in Constitutional Law by Keir and Lawson, 1948.

22. The Constitution by E. S. Corwin, 1946 p. 163 seq.

common lawyers. However in course of time the term liberty came to mean, apart from personal liberty, also freedom of contract, and certain other fundamental rights of citizens. At the time of the New Deal, the conception of freedom of contract as connected with liberty tended to be abandoned, and instead the rights of labour were substituted. The clause itself originally meant modes of procedure as known in Common Law. Later it was understood as reasonable law and procedure and reasonable always became what the majority of the Judges of the U.S. Supreme Court found to be reasonable. Thus the Judges assumed the power to declare any law un-Constitutional which they found unreasonable in the light of the Constitution. The opponents of the due process of law clause in the Constituent Assembly suggested another safeguard clause in relation to personal liberty. It was borrowed from article XXXI of the recent Constitution of Japan which states that "No person shall be deprived of life or liberty....except according to procedure established by Law."[23] This clause confining constitutional protection of liberty to procedure deprives the individual of constitutional protection in substance. Japan was until recently an autocratic State, and it is only in the post-war years that the Japanese Diet considered and voted a new Constitution which is a complete break with their ancient traditions. It is natural that Japanese conceptions of liberty should undergo a gradual and careful evolution. India is certainly not deprived of a tradition of liberty and it is therefore astonishing that the Indian Constitution makers should have been induced to borrow something from an Asian country which was far below their own democratic conceptions. When the Japanese formula was explained to the Assembly as suitable one of the most prominent members of the Assembly, Sir Alladi Krishnaswamy Aiyar who opposed the due process of law clause remarked, that he was not quite sure "that they should not protect themselves against judicial vagaries".[24] The term vagaries in plain English means a departure from the regular or usual course of conduct, in its extension it is synonimous with a capricious or fantastic change of mind. These words can hardly apply to the American Judiciary, nor can I see why they should apply to Indian Judges who have followed so faithfully the tradition of their English predecessors. Reading some of the arguments of the Supreme Court Judges in the case of A. K. Gopalan *versus* the State, one feels that had the American due process of law clause been included in the Indian Constitution, it would have supported their very personal views on the law of liberty.[25] The Constitution makers did not care to supply to the Judges a noble weapon of which they certainly would have made good use.

Whatever the outcome of these conflicting views, the influence of American Constitutional Law on the Assembly was decisive as to Judicial Review. In this respect the Indian Constitution shows a distinct deviation from English Law. Though Judicial Review is adopted in a limited form, and although the Indian Judiciary cannot declare Laws unconstitutional on the test of reasonableness, it has the right to do so within the limits defined in the Constitution. One of the members of the Assembly gave the right explanation of the inherent need for Judicial Review to India when he remarked that "A Supreme Court with jurisdiction to decide upon the constitutional validity of Acts and Laws can be regarded as a necessary implication of *any Federal scheme*".[26]

Apart from the above two issues in which American Constitutional patterns worked irrespective of their outcome on the minds of the Indian Constitution makers, there were several other provisions of the Draft Constitution in which various patterns of American Constitutional Law were taken into consideration. The rejection of the American Presidential regime resulted however in the automatic rejection of all those provisions which are strictly connected with the above regime. In one of the meetings of the Assembly in August 1947 reference was made to the powers of the U.S. Congress to regulate commerce with foreign nations and commerce among the member States of the Federation as well as to decisions of administrative bodies concerned with the regulation of commerce.[27] Following the adoption of Responsible Government, the tendency within the Constituent Assembly as to distribution of commercial powers prevailed to adopt Canadian and Australian patterns as more suitable to Indian Federalism. However to carry out the provisions of the future Constitution relating to freedom of trade, commerce and intercourse in India, an authority was visualised to be in charge of their execution. Thus Par-

23. Constitutional Precedents, New Delhi 1946, p. 290.
24. P.C.A., Vol. 2, p. 209.

25. See 1951 S.C.J., 174 seq.
26. C.A.D. Vol. IV. p. 754.
27. C.A.D., Vol. IV, p. 994.

liament is authorised to establish a special body on the lines of the inter-State Commerce Commission in the U. S. A.[28]

A further discussion of constitutional patterns and of the pros and cons of the adoption of American institutions as discussed in the Assembly would be beyond the scope of this examination. So is the discussion of their application in practice in all cases in which some of these institutions were adopted. It is however not out of place to mention the recent advisory opinion of the Supreme Court given on the initiative of the President on one of the greatest Constitutional issues, the issue of acceptability versus non-acceptability of delegated legislation in India.[29] Delegation of Legislative Power to the Executive means a deviation from the doctrine of separation of powers. It is therefore in principle not acceptable under the American Constitution whereas it is consistent with English Constitutional Law. The majority of the Judges declared themselves for the English solution in India, the minority, including the President of the Supreme Court, leaned towards the solution as adopted in the U. S. A. This opinion is one of highest importance the more so that the majority Judges based their views a good deal on American writers on Constitutional Law who admit that the doctrine of separation of Powers cannot be rigidly followed in present-day circumstances.[30] To deprive the Executive of participation in Legislation in all these numerous cases in which the Legislature must resort by delegation to its help, would mean to ignore the requirements of modern government. American practice has yielded to these requirements in many instances, but in theory the sanctity of the doctrine of separation of powers still has a grip on the minds of American politicians and lawyers. India has followed progressive trends in the matter but though this means the adoption of English practice, it is by no means a deviation from American views as these views are now strongly divided.[31]

We have already mentioned above the influence of the American Bill of Rights on the Fundamental Rights in the Indian Constitution. Those making a thorough study of the Indian Supreme Court and High Court cases concerning Fundamental Rights will find in them ample material from U. S. case law and text books by which the Indian judges have tried to explain some of the doubtful

28. See art. 307 of the Constitution of India.
29. 1951 S.C.J., 527.
30. The President by E. S. Corwin, 1940 pp. 315-6.
31. 1951 S.C.J., 678 seq.

points in the chapter on Fundamental Rights. This applies first and foremost to the interpretation of the equal protection clause (Art. 14) and the various rights to freedom (Art. 19). Restrictions on Fundamental Rights imposed by the State for public purposes have been accepted by the U. S. Supreme Court with the help of the doctrines of Police Power and of Taxing Power, and of the Right of Eminent Domain. According to Sub-Clauses 2 to 6 of Art. 19 of the Indian Constitution the State can impose in the interests of public order *reasonable* restrictions on the freedom of citizens. Thus the Indian Judges may declare any unreasonable restrictions unconstitutional on the express basis of the sub-clauses. It should be made clear that this power is based on express constitutional provisions and not on the general basis of the American due process of law clause by which the American Judges declare without the help of such provisions any law unconstitutional if unreasonable in the light of the Constitution. We have seen above that the Indian Judges do not possess this extensive power.

A final word about the meaning of "American influence". The term is obviously not quite exact as our considerations have confined themselves to United States influence only. If South American influence were to be considered it could not be done so praeterito but pro futuro only. The Indian Constitution makers were not faced with it at all. The South American Republics have adopted democratic institutions more or less based on the U. S. pattern which provides for a President endowed with considerable power. South American politicians and generals in their fight for power have often converted the position of President into something more than was visualised in the original Constitutions. This may have been one of the reasons for which the Indian Constitution makers "sub-consciously" dismissed the Presidential regime under which strong Presidents outside the U. S. A. may tend to become too ambitious.

BOOK REVIEW

Thoughts in Current Philosophy—by Sri C. Mitra, M.A. (Published by Sri Indu Bhusan Ghosh, 30, Talpukur Road, Calcutta-10. Price Rs. 2-8-0).

This book (pages 119) is a collection of essays published in various Journals at various times dealing with different subjects. There are articles on "The Nature of Spiritual Life", "Is there a General Will", "Science and Civilization", "Can Crime be Punished?" etc. Each article is a unit by itself and as such there is not much continuity of thought between the different essays. But the author has summarised very well some of the extant theories on these various subjects. The article entitled "Is there a general will ?" discusses the rights of the individual as against those of the state as expounded by various philosophers, which would be of great help to the students preparing for examinations. It is maintained here that the sublimation of one's will to a higher will can only be the basis of true democracy.

The article on evolution is again a good summary of the different theories, emergent and creative. The comparative study of Intellect and Intuition in Bergson which is reported as an imaginary conversation is quite interesting. But the author is labouring under an illusion that Śankara's theories are comparable to this or that Western philosopher, and hence the comparisons are not always happy. For instance, he says, concluding his article on Bergson (p. 66), "In other words, while Śankara has negated life and not explained it, Bergson ......has at least admitted it and attempted to give an explanation thereby". There are many criticisms of Śankara's Advaita but that it has failed to give an explanation of life is the strangest of all. Similarly, in his article on "Māya—a misnomer", he characterises the Advaita of Śankara as acosmic, static, non-social and world-negating. He blames Māya and Advaita for the unsatisfactory condition of life in our country. To say, that, because people have wrongly applied a particular theory, the theory itself is wrong, is to say the least an illogical argument. Śankara does not say that the world is unreal for the man who lives in the world. Hence there is every scope for social betterment and happy community life in Śankara's philosophy.

These thoughts for the welfare of humanity are illfitting with the author's ideas on war. He says in "Humanity and war" (p. 68)

... for worse or for better, war is the key to world-process." He is emphatic in his denial of the possibility of a permanent world peace. Taking an analogy from nature and natural processes, he maintains, "Humanity may not, and possibly should not, find an age when war can reach a Zero Degree". (p. 70). Thoughts that are startling in this war-ridden and consequently miserable world!

In his chapter on "Progress", the author is still more outspoken in his views. Characterising the present era as one that is morally degraded, he blames women for the present state of affairs and adds, "Though an innovation and a latest finding as a solution to some social problems, birth-control is at once a violence, a psychological inconsistency and a physiological deformity". (p. 73).

Again this is the first time we hear of the Mahāvākyas made to have the Cartesian meaning: "All things are, because the self is". (p. 83). The chapter on "Sri Aurobindo" is refreshing in its appreciation of the saint.

On the whole, the book abounds with discussions ranging from metaphysical problems such as the reality of the world to the function of civilization. It is light and entertaining reading.

Supplement to the Madras University Journal

THE SUNDARAM AYYAR—KRISHNASWAMI AYYAR ENDOWMENT LECTURES

INTER-STATE RELATIONS UNDER THE NEW CONSTITUTION

BY

V. G. RAMACHANDRAN, M.A., B.L.

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PART I

The Constitution and Before

May I at the outset thank the syndicate of the Madras University for giving me a valuable opportunity for addressing before this distinguished audience on a subject which is of great topical and Constitutional interest namely Inter-State Relations under the New Constitution. These Endowment Lectures held in revered memory of the late P. R. Sundaram Ayyar, the Jurist of ancient Madras and of the other legal giant of old Madras, the late Mr. Krishnaswami Ayyar has been fittingly instituted by our foremost Constitutional legal expert of India—Sir Alladi Krishnaswami Ayyar. With the advent of Independence to India the old title of the Endowment lecture "Inter-State Relation of Indian States and British Indian Provinces" has necessarily to be modelled to suit the needs of the times under our present Indian Constitution. Otherwise, the lectures will be an anachronism of bare historic interest with no bearing on current Constitutional position of the States in Independent India. That is my sole excuse for choosing the title of these lectures in the present form.

Concept of State

The concept of a State implies the existence of a body corporate of a civilized people with an organized form of Government which guarantees to every man in the words of 'Spinoza' that he may be 'free from fear, that he may live in all possible security; in other words to strengthen his natural right to exist and to work without injury to himself and others; to develop his mind and body in security and to employ his reason unshackled. In fact the true aim of Government is liberty.' The sanction of Government is the supreme power of the State. Sovereignty vested in the King in Monarchial States; Absolute Monarchy is a feature not present in the Modern World. The sovereignty of the King of England is so constitutional that much of it is now delegated to the Parliament of the United Kingdom which alone is supreme in matters of State. With the advent of The Independence of India the sovereignty of the British Crown passed to the people of India and in the preamble to the Constitution of India it is the people of India who solemnly resolve to constitute India into a Sovereign Democratic Republic so as to secure to all its citizens:—

(i) justice (social, economic and political);

(ii) liberty (of thought, expression, belief, faith and worship);

(iii) equality (of status and of opportunity) and

to promote among them all fraternity assuring the dignity of the Individual and the Unity of India. So saying the people of India on 26-11-49 gave unto themselves the New Constitution of India. The sovereignty of the people of India now vests with their Parliament which draws its authority under the Constitution only from the people of India.

Though India i.e., Bharat, is one State it is yet constituted of several States that have federated into the Union of India under the Constitution—Under Art. 1 of the Constitution of India India that is Bharat, shall be a Union of States specified in part A, B and C of the first schedule and shall include territories specified in part D of the first schedule and such other territories as may be acquired. A unitary State can possess all the attributes of absolute sovereignty. But when it is a federation of States each of the component States has necessarily to yield part of its sovereignity to the Central Union or the Federal Centre so as to make the latter, the supreme centrifugal authority which binds the several member states into one strong political and economic union. The component state thus loses part of its power to the centre only to profit, by such devise in matters of finance, administration and defence. It is in essence a co-operative commonwealth of component States. What then are the features of the Relations between these several States of India under the New Constitution is truly the subject-matter of our lectures. To properly appreciate the matter, it is

necessary that we must have a short survey of the history of the Indian States and Provinces prior to the advent of the New Constitution of India.

Historic prelude to The Constitution of India

Prior to the advent of the Indian Republic, the several Provinces of India (now part A States) and States (Native Indian States such as Travancore, Mysore—Part B States under the Constitution) and the Chief Commissioner's Provinces (Part C States) and the centrally administered areas (Part D States) — these were all functioning under the Government of India Act 1935. The Crown of England was the Supreme Head of State functioning through his Viceroy, the Governor-General of India. The Governors of the Provinces were directly responsible to the Secretary of State of India functioning in London. The present part B States of Mysore, Travancore and the like were independent bodies subject to the 'paramountcy' of the Crown of England. The history of the Rule of India by England is evidenced by the Regulating Act of 1773, Pitts India Act 1784, the Charter Acts of 1793, 1813, 1833 and 1853; the Government of India Act 1858 following the 'The Famous Indian Mutiny of 1857; and the Indian Councils Act 1861.' The discontent of the educated classes in India and the birth of the Indian National Congress in 1885 resulting in the continued agitation set up by the Indian National Congress resulted in the Minto-Morely Reforms of 1909, and later The Montague-Chelmsford Reforms during the First World War (1914—18) ushering The Government of India Act of 1919; The Simon Commission of 1927 and The first Round-Table Conference of 1930 finally led to the passing of The Government of India Act 1935; the Constitutional deadlock created by the agitation of the Indian Patriots again came to a head soon after the 2nd World War broke in 1939 followed by The Cripps Offer of 1942; The Muslim Demand for Pakistan in 1940 and the Quit India Resolution and Revolt by the Congress of 1942 yielded the Wavell Plan of 1945, followed by a Cabinet Mission in 1946. By the Indian Independence Act 1947 Parliament of England for the first time recognised the Independence of India and Pakistan working under the federal-structure envisaged in the Government of India Act of 1935, till the Constituent Assembly of each Dominion formulated its own Constitution; the formation of the pre-partition Constituent Assembly of India on 8-12-46 and the subsequent separation of the Assembly for the Indian Dominion only on 15-8-47, the continued sittings of the Assembly to hammer out a Constitution for India, ultimately resulted in the forging of the New Constitution of India on 26—1—1950. All these events would indicate how the political economic and administrative destiny of the several States and Provinces of India were fashioned out from time to time from the Days of the East India Company in 1600.

The Government of India Act of 1919

The Montague-Chelmsford Reforms which resulted in the Government of India Act of 1919 envisaged the goal of political India as 'the progressive realization of responsible government.' The central Government in Delhi was entirely controlled by the Governor-General-in-Council who was responsible to Parliament in London. The two chambered Legislature could only have the power to discuss and pass resolutions but had not the power to defeat the Government by an adverse vote nor had they the power of the purse. In the provinces there was 'Dyarchy' with reserved and transferred half of the Government, the latter alone being responsible to the legislative council of the Province. Key portfolios such as Finance, Defence, Police etc., were all Reserved subjects. The native States of Travancore, Mysore, Hyderabad etc., were all bound by treaty affiliations to the British Crown. The 'diarchy' provinces had nothing in common with these states.

The Government of India Act 1935

The national upheaval in India after the Rowlett Bill and the Jallianwalla Bagh Tragedy heralded the Non-co-operation and Kilafat Movement led by Mahatma Gandhi. The Swaraj Party led by Pandit Motilal Nehru and C. R. Dass later stepped into parliamentary activities for continuing the National Struggle. The Reforms of the 1919 Act were deemed a failure and the Parliament sent the Simon Commission in 1927 to make further enquiries for the need of appropriate political reforms. Sir John Simon came and went. His report did not advance matters. The Salt Satyagraha of Gandhiji compelled a pact between Lord Irwin, the Viceroy of India and Gandhiji and this later led to the second Round-Table Conference in London. But this also did not satisfy the aspirations of Nationalist India. The Parliament in England was thence compelled to evolve a new plan by the passing of the Government of India Act of 1935 by which for the first time in the history of India a federal structure was envisaged. It provided an All-India Federation consisting of the Provinces and States. This federation was to come into being when a specified number of States joined it. The Federal Cabinet had to be thoroughly

responsible to the Federal Parliament. But Defence and Foreign relations were reserved subjects under the Governor-General who had also certain special responsibilities even in the subjects allotted to the Ministry to secure the financial credit and stability of India, the protection of minorities, Indian States and services. Though diarchy was ended in the Provinces, and all the subjects were handed over to Responsible Ministers the Governor had a wide field of special responsibility and individual judgment similar to that of the Governor-General. The Governor-General and Governors were responsible to the Crown of England holding office during His Majesty's pleasure. By Section 104 of the Act the residual powers of legislation both federal and provincial vested with the Governor-General in his discretion.

The Problem of Indian States

In actual practice the option to join the federation was not exercised by the Indian States (now Part B States) with the result the Federal structure adumbrated in the Act of 1935 never came into fruition. The two Indias—the India of the States and the India of the Provinces continued to chalk out their separate paths. The political advance in the States was left far behind and there was no uniformity of organic political growth as between the 550 autocratic States of various dimensions and development. It was the Governor-General's special responsibility under Sec. 12 of the Act to secure the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof. As for the people of the State, they were the sole concern of the ruler of the State. If a State acceded to Union in accordance with Sec. 6 of the Act, the 'Instrument by Accession' accepted by His Majesty shall form the only basis of relationship between the acceding State and the Federal Union of India. Items 1 to 45 of List I (the Federal list) will be the normal field over which the States shall surrender their power to the Union Parliament. But despite accession, the subjects of the States do not become British subjects. They are foreign Nationals when compared to British Indian subjects; only the Ruler of the State binds himself by the Instrument of Accession that provisions of the Government of India Act 1935 shall be enforced inside his State to the extent agreed to.

The sovereignty of the United Kingdom which is exercised over all the Federal Units in Canada and Australia is absent when it deals with British Indian States, though the British Indian Provinces come under the former category. For though His Majesty may by treaty, usage or grant exercise authority over these Indian States, yet they are foreign territory over which Parliament cannot legislate. The Indian States were sovereign in their domestic matters and were bound to the Paramount Power only by treaties, engagements, grants (sanads, usages and practice). Of course under the New Constitution of India there is only one citizenship in India and all the States of the Union whether of Part A, B, C or D are subject to the Parliament of India.

It is necessary to understand the historical set up of the Indian States to understand their relationship with the paramount power prior to our Constitution and to the Federal Centre after accession. The Regulation of the relationship between the paramount power and the State by a series of agreements or usages is the International law applicable to the State in its relationship with outside powers. The Municipal Courts of the Indian State could only administer the local laws of the State and cannot touch Inter-statal law which was enforceable only by executive order as its sanction was under the paramountcy of the British Crown. To this extent Inter-statal law was a limitation on the absolute sovereignty of the State. The territorial extent of the Indian State was fixed and the power to add to it by conquest or other means was denied to them by the paramount power. Even the Government of India Act by Sec. 290 (i) provided that the Governor-General by order can only create a province or increase or diminish the area of a province or alter the boundaries of the Province. But the Act did not touch the Indian States. But in the New Constitution of India Art. 2 empowers Parliament to admit or establish New States and Art. 3 empowers Parliament to alter the extent of any State. By Art. 1 the Union of States included all States specified in Part A, B, C, of the first schedule and the territories specified in Part D of first schedule and such other territories as may be required. Thus an Indian State like Travancore after its integration with India under the Union Constitution was merged with Cochin. We have other great instances by the Chattisgar States merging with the Province of Orissa on 1—1—48, merger of Cooch Behar with West Bengal on 1—1—50, the Union of 222 Kathiawar States into a New Union called Sowrashtra. The merger scheme under the new Constitution left out only Hyderabad, Jammu and Kashmir and Mysore which were by themselves of considerable size.

The treaties made by Indian States with foreign powers were solemnly kept up during the British period through the medium of the British Government viz., treaty with Tibet and China by

Kashmir and Jammu at the time of the conquest of Ladak. Lord Birkenhead the Secretary of State for India in his despatch to the Secretary-General of the League of Nations in 1925 recognised the sovereignty of the Indian States whose exact relation with the paramount power—Britain—can be determined only by the series of engagements, treaties and long-standing political practice. International obligations assumed by Britain cannot however thus be forced on Indian States in the sphere of their internal administration. Hence the Indian States acquired Inter-national status though only through the medium of the protecting power. The Indian States had delegated their external independence and right of self-defence to Britain by treaty. But they were generally consulted as allies of Britain in matters of import affecting War, defence, foreign relations etc. Under the New Constitution of India, we have no such problems as all the States have acceded to the Indian Union. The paramountcy of Britain lapsed with the British quitting India and with them the treaties which the States made with Britain also lapsed and this was made explicit in the Indian Independence Act of 1947. That left the States in a nascent state and they preferred to accede to the Federal Union of India as they soon realised that it was almost impossible to maintain an independent existence from the rest of the country. Thus in the Inter-national sphere Indian Union is now the homogeneous Unit. The several States inclusive of the Old Indian Native States have absolutely no separate political existence to operate in the international sphere.

Another historical aspect of the Indian States is that the Government of India under its paramount power had not only the right to intervene when there was misgovernment in the State but may also intervene if it is for the benefit of the ruling Prince, State or India as a whole. Disregard of the obligations of sovereignty by the ruler, gross misgovernment, refusal to do substantial justice, refusal to protect life and property, wilful neglect of the general welfare of the people of the State, special responsibility of the paramount power during the minority of the Ruler and Imperial interests were often regarded as sufficient grounds for interference by the paramount power.

But under the New Constitution of India the Government of Part B States is brought on a par with that of Part A States (the old Provinces). Art. 238 enjoins that provisions of Part VI shall apply to Part B States, that the Rajapramukh of the State shall be given such allowances and privileges as the President may determine and by Art. 371 the States shall for a period of 10 years from the commencement of the Constitution be under the general control and direction of the President of the Union. Art. 366 (15) defines 'Indian State' as territory which the Government of India recognized as such a State. Hence under the Constitution the old Provinces and Old Indian States are now labelled merely States—A, B or C. Art. 366 (21) defines Rajapramukhs as one recognized as such for the time being by the President. There is no other provision in the Constitution relating to the appointment and term of office of a Rajápramukh as in the case of a Governor of Part A States. That indicates that the Rajapramukh of Part B State is one who is recognized as such by the President. Powers of recognition implies now recognition or withdrawal of recognition also. The hereditary rights of the Ruling Prince may be respected by the President by recognizing him as the Rajapramukh. But he may also refuse to do so in his individual judgment for reasons that may satisfy him as best in the interests of the State. In fact we have the recent instance where the President withdrew recognition from Maharaja Sir Pratab Singh Geikwar of Baroda by order dated 12-4-51 which order itself gave recognition to the Maharaja's son Yuvraj Fateh Singh as the new ruler of Baroda. The charges against the ex-Maharaja were defying authority of the Government of India, misuse and misappropriation of the public funds of the State, supporting reactionary elements, agitating among the rulers of the State to thwart the settlement entered into by the Federal Union with the State rulers. In the merger agreements with the Nizam and Maharajah of Mysore there is a clause whereby the Dominion Government guarantees the succession according to Law and custom to the gadi of the State. There is usually a clause in the covenant entered into for the formation of the Unions in Part B States that "every question of disputed succession in regard to a covenanting State shall be decided by the Council of Rulers after referring it to a bench consisting of all the available judges of the High Court of the United States and in accordance with the opinion given by the High Court." But despite all this the President of the Union has the power to recognise or withdraw recognition from a Rajapramukh. It thus boils down to this that the Part B States have to run their Government on the lines of Part A States, that the Rajapramukh's rights will be controlled by the agreement embodied in the Instrument of accession, that the Federal Union shall have power over the Part B States to the same degree as they have over Part A except in spheres specially left out in the covenant of integration by the State with the centre; Though at first

Part B States acceded only on three subjects: Defence, Foreign affairs and Communications, later, all the States barring Jammu and Kashmir have acceded in respect of all subjects covered by the Federal List I except taxation. This brings all the B States almost on a par with Part A States.

The right of coinage exercised for long by Ruling Princes of Bikanir and Alwar was surrendered to British Paramount Power. All the States that have acceded to the Indian Union under the New Constitution have surrendered their rights of coinage (entry 36 List 1) to the Union. Even the power of taxation has been yielded by Part B States in part by financial agreements with the centre under Art. 279 of the Constitution as a result of the Indian States Finance Enquiry Committee of 1948. We shall disçuss more about this while adverting to financial relations between States. The old vexed question of extraterritorial jurisdiction between the old Indian States inter se and with British contonements are no longer a problem as India is one Union territory with no foreign pockets in the shape of Indian States of the old pattern. The easements enjoyed by one State in the territory of another such as privileges in religious Institutions, vested rights, with regard to water, navigation and passage irrigation, air navigation, these, however continue to be recognised as legal rights by usage, grant or contract as the case may be but all this will however be subject to the control and direction of the Federal Union as laid down in the several articles of the Constitution. The railways and their property are now in the Union list and as such there is no more the old problems of State railway and Indian railways run by private companies. Now all railways are under Indian State management and are divided for administrative purposes into Regional Groups such as the Southern Railways, the Eastern railways etc. The old Law that an Indian Prince cannot be sued in a Court of British India without the previous consent of the Governor-General in Council whether in his sovereign capacity or individual capacity rested on the desirability of the Paramount Power protecting the Ruler from facing litigation. The paramount Power where it would not give such permission to sue the Ruler, would itself consider the desirability of taking action on the administrative side in its paramountcy jurisdiction. Under the New Constitution there is no immunity to the Ruler of the State from private action. For the acts discharged by him under the Constitution where the Rajapramukh acts in his individual discretion no action lies. The President of the Republic is protected from all civil action in respect of his public duties whether it be in his individual discretion or on the advise of his Council of Ministers. This is on the analogous principle that 'the King can do no wrong.' Under Art. 361 the President, Governor or Rajapramukh are protected from civil action for acts done by them in their official capacity. No criminal action could be started against them during their term of office. The President could be impeached in a Special Tribunal created by Parliament under Art. 61.

Then again the right of the Ruler to purchase of property outside the State without permission from the Governor-General was once debated though in Faridkot V Anant Ra AIR 1929 Lahore 1, such restriction was gravely questioned. But with the advent of the Federal Union of India Rajapramukhs and Upa Rajapramukhs are as much citizens of India and as such entitled to purchase or sell property anywhere in India just as an ordinary citizen can. The theory that Indian States are foreign gets abrogated by the New Constitution. Decrees of Indian States (Part B States) are no longer regarded as 'foreign decrees' and this has been made more clear by the Code of Civil Procedure Amendment Act 11 of 1951. Sec. 2 (cl. 5) of that Act defines 'foreign court' means a court situated outside India and not established or continued by the authority of the Central Government. Hence decrees of any State in India can be executed in any other State like any ordinary decree. The Chamber of Princes constituted during the British Regime to advise the Princes and to regulate their relationship with the Viceroy or Governor-General is now a thing of the past. The princely order cannot now function as a body corporate through the Chamber of Princes in as much as it will tend to question the authority of the Union centre and the entire Federal structure of India.

Sardar Patel's gigantic work of Consolidation and Integration of States

An attempt to revive it was sternly put down by the late Revered Sardar Patel, the Iron man of the Central Cabinet. This we have already adverted to in the case of the Geikwar of Baroda. The princely order which used to be called as the 'backwater of the Storm' had its use in the British Regime to keep in check the Nationalistic gale which threatened to sweep the British Bulwark of The Indian Empire. Till immediately prior to the inauguration of the Indian Republic, the Princes did not show any sudden inclination to accede to the Indian Union due to activities of the British officials of the political department which dealt with the States till July 5th 1947. But later particularly after July 5th 1947 the State

Department of the Government of India came into existence with Sardar Patel as its head who had to face the big and baffling problem of devising some method whereby the 562 States of India could be brought into a harmonious constitutional relationship with the National Government of India. Sardar Patel was careful to point out 'I hope the Indian States will bear in mind that the alternative to co-operation in the general interest is anarchy and chaos, which will overwhelm great and small in a common ruin if we are unable to act together in the minimum of common tasks.' The first stage of the Sardar's efforts was directed in making these States first accede to the Union in respect of three subjects only external affairs, Defence and communications which was accomplished in respect of most of the States by August 15th 1947. The next stage was the consolidation of smaller States who cannot afford to maintain a separate efficient administration to merge in the adjoining Provinces. Merger first started in Orissa in November 1947 and gradually spread to the Central Provinces, Bombay, Assam and United Provinces. Some States were integrated with larger States resulting in the Sowrashtra Union (of about 300 States) the Unions of Madhya Bharat, Rajastan, Vindhya Pradesh, Travancore, Cochin and Patiala and East Punjab States; Bhopal Bilaspur etc., (about 61 small States) were taken over by the Federal Union as seven centrally administered areas while big States as Hyderabad, Jammu and Kashmir, and Mysore were regarded as individual units of the Indian Union. Even of the seven centrally administered areas three now have legislative assemblies with Ministers responsible to them. Thus by clever manipulation, diplomacy and gentle pressure Sardar Patel reduced the 562 States into 15 States of the Indian Union so as to fit them into an administrative pattern as the Part A Provinces. It must be said to the credit of the Princes that they rose to the occasion in a realistic recognition of the march of democratic forces in India. They did not hang on to their time-worn treaties and antiquated prerogatives. Furthermore the Ruling Princes were prevailed upon to surrender their Ruling Powers (symbol of their sovereign rights) to the Representatives of the people. In return the Government of India guaranteed suitable privy purses to the rulers which in total aggregated to Rs. 4,66,73,535. The maximum to a single ruler may not exceed 10 lakhs per annum. The aggregate Privy purses before Independence was 25 crores while it now comes to about only 4½ crores. The administrative experience and the advantageous social position of the nobility was utilized in a way by the appointment of some of the Princes as Rajapramukh and Upa Rajapramukh of the newly formed Union of States so as to function as their constitutional head.

Hyderabad and Kashmir

All this transformation was done in a peaceful manner except in Hyderabad where some police action had to be taken against the Nizam's Government which was alleged to be influenced by blood-thirsty Razackars, a 'fifth column' of Pakistan. The Nizam capitulated and a military Government was formed in September 1948. By the end of 1948 Hyderabad acceded to India subject to a stipulation that it be ratified by the constituent Assembly of the State which was to come into vogue to determine the Constitution of the State. In a recent case the Hyderabad High Court held (vide Madras Mail, 20-4-52) that the Nizam has no prerogative after the coming into force of the Indian Constitution, as the Nizam was only a Rajapramukh of a Part B State under the Federal Union of India. Kashmir acceded to the Indian Union to protect itself from the invasion by Pakistan forces and its fifth column, the Azad forces; India accepted the accession and sent troops for the Defence of Kashmir and Jammu. The skirmishing of the Pakistan troops continue despite the intervention of the U.N.O. The United Nations interference and the interminable enquiries are yet not over though it had ordered the 'cease fire' on January 1, 1949. The future of Kashmir is left to the will of the people to be ascertained by a Plebicite. The Constituent Assembly of Jammu and Kashmir, brought into fruition by the herculean efforts of the redoubtable Sheik Abdullah, the people's leader is now sitting to formulate the Constitution of Kashmir. Ofcourse Sheik Abdullah has been adament that Kashmir and Jammu will retain their internal sovereignty and accede to India only on three subjects: i.e. Defence, communications and foreign relations. The Kashmir C.A. has also decided to have an elected Head of the State instead of the Ruling Dynasty. There is a specific provision for Kashmir and Jammu in Art. 370 of the Constitution which states that the power of Parliament to make laws for Kashmir shall be limited to those matters in the Union list and the concurrent list which in consultation with the Government of the State are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to be Dominion of India as matters with respect to which the Dominion Legislature may make laws for "that State." Accordingly after consultation with the Kashmir Government the President issued a notification on January 26, 1950 defining the subjects. The only articles which apply to Kashmir and Jammu as at present are articles 1 and 370. The theory of an elected Head instead of the Rajapramukh necessitates further deep consideration and probably amendment of Art. 370. The application of other articles is a matter of consultation with the Government of Kashmir till its Constitution Assembly makes the decision. The President therefore on receipt of this decision shall either abrogate Art. 370 or make suitable modifications in the light of the decisions of the Constituent Assembly. The acceptance in full or part jurisdiction of the Supreme Court over Kashmir is yet not decided. One fact is clear that Kashmir and Jammu are greatly in need of financial support from the Federal Union of India. During the last 4 years a sum nearly of Rs. 5/- crores had been granted to Kashmir as loan and an equal amount of 'Aid to Kashmir' which amount it is doubtful to venture as repayable. Continued financial assistance is necessary for the stability of the administration and the defence of Kashmir. As it is, it is only a 'one way traffic,' so far as Indian Union is concerned. So recently at the conference between the representative of the Ministry of States of the Union Government and the Kashmir Government a preliminary talk took place regarding the integration of Finance. The first round of talks concluded on 17—4—52 (vide Hindu 20—4—52). It was then found that Kashmir gets only a revenue of about 1 — 5 crores from Land, Customs, Incometax, Central Excise and by levy of the toll. Kashmir expects compensation for the surrender of these revenues to the Union. But no Part B State was given any such compensation. Regarding Incometax by integration with India the Kashmir State would get a larger amount from the divisible Pool of Incometax than what the State would contribute to the centre. Thus it is all advantageous to Kashmir. But it will be therefore appropriate that Kashmir should accept immediately articles 148 to 150 regarding audit of account as the Indian Union which supplies funds has a right to see it is properly spent by a special audit by Union offices. Thus however much, certain forces in Kashmir, may desire freedom from the control of the Indian Union, events will inevitably push Kashmir to occupy the position of a regular part B State and not to aspire for a special position superior even to Part A States. Kashmir cannot take the maximum advantage of the Federal Union and yet not discharge its obligations towards the Union.

Without in any way hampering the delicate negotiation now proceeding between Kashmir leaders and the Government of

India, it is but proper to emphasise that it is betimes that India takes a more definite stand in the matter. Kashmir may not desire to be a mere Part B State but it cannot claim a higher place than Part A States if her accession is genuine. Her Constituent Assembly has made it legal the abolition of Zamindaris or large private proprietorship without just compensation. Compensation is very fundamental according to the Constitution of India (Art. 31, 31-A and 31-B). This must be respected by Kashmir also. Even in U.S.A. and Australia such compensation is recognised as extremely just and lawful. Kashmir cannot also override such a specific provision as Art. 370 and do away with the institution of Rajapramukhs altogether. It again smacks of going against the solemn covenant with the ruling chiefs. Not to accept the jurisdiction of the supreme court of India is another tangle. As already stated if Kashmir wants to have it all to her own liking and not accord to the spirit and letter of the Indian Constitution then, it is betimes that the Government of India should take a stern attitude against such disastrous tendencies of the components of the republic to the detriment of the prestige and stability of the Federal Union of India. Kashmir must realize that she has the help of Indian Finance and Army because she solemnly promised to be a true component of the Indian Union.

Since I had completed my thesis on this subject there is the welcome news from no less an authoritative source than our Prime Minister of India Pandit Jawaharlal Nehru that the personal discussion with the Kashmir Leaders last week has led to the following argeed positions. Mr. Nehru on the floor of the Parliament stated amidst cheers " the accession is complete in law and in fact." He added that " it was agreed the Head of the State shall be the person so recognised by the Union President on the recommendation of the Legislature of the State. He would hold office during the pleasure of the President and more specifically for a term of five years and until such time as his successor entered upon his office. The mode of election of the head of the State was a matter of detail to be settled by the Kashmir Legislature." It is understood that for the present the Yuva Raj will be the first elected Head. This appears to be a compromise. On the question of the powers of the President of the Republic of India Mr. Nehru stated " that the President will have the powers to reprieve and commute death sentences etc.......that he shall have the emergency powers to declare a state of emergency in case of an invasion, external danger or internal disturbances but in the case of internal disturbances any action taken in this regard should be with the concurrence of the Government of the State." This again seems to be a little halting when compared to the position of other Part B States. With reference to property acquisition Mr. Nehru stated "we agreed that the state Legislature shall have the power to define and regulate the rights and privileges of the Permanent residents of the State, more specially in regard to acquisition of immoveable property, appointments to the services and like matters. Till then existing laws shall apply". With reference to Fundamental rights it is agreed that they should apply to Kashmir also but that certain adjustments have to be made so that they should not come in the way of the land legislation of the State Government or hamper the State Government's precautions against infiltration or sabotage or espionage by the enemy. It is gratifying that the supreme court's jurisdiction over the State is accepted in principle. Mr. Nehru stated that it was agreed that the Supreme Court should have original jurisdiction in respect of disputes mentioned in article 131 and also in respect of the Fundamental rights that were agreed to by the State. The Tribunal of the Board of Advisors to His Highness is to be replaced by Supreme Court of India which shall be the final Court of appeal in all Civil and Criminal matters as laid down in the Constitution of India.

It was further agreed that special provision should be made in the laws governing citizenship for the return of those permanent residents of Jammu and Kashmir State who went to Pakistan during the disturbances of 1947 or earlier and could not return but now returned. They will have all the rights of citizenship. Financial integration is also agreed to but Mr. Nehru expects details to be worked out soon. We may state that what Mr. Nehru now revealed is definitely a big improvement of the situation but one would like a categorical assurance on these matters from the Kashmir Leaders also. What is more important is that the structure of our Constitution ought not to be changed to appease Kashmir. Certain adjustments may, however, be made within the ambit of article 370 of the Constitution. A presidential order under art. 370 should be enough to effect the necessary modifications necessary for Kashmir. Constitutionalists and publicists and politicians naturally should help towards the conclusion of such a desirable solution.

But we must as rationalists object to any final solution that truncates fundamental rights or refuses reasonable compensation for the compulsory acquisition of private property, or that which accords to Kashmir a position that no other A or B State could have in the Federal Union of India. I am free to confess that we are rather needlessly soft to Kashmir against the interests of the rest of India. The question can be rightly posed as to why there should be any abridgment or adjustment of fundamental rights at all. In its stead why not resort to suspension of fundamental rights for the necessary period when the needs of public interest demand it? Stability of administration in the whole of India will be jeopardised once we tinker too often with property rights once we have agreed to certain basic fundamental rights at the beginning when we formulated our own constitution. Then again in the matter of Head of the state, what is to happen if the President's recognition is not given to the elected head of the state of Kashmir? Mr. Nehru admitted to the press that there would indeed be a 'conflict then'. Why should there be such dubious concessions to Kashmir ? Why again restrict President's Emergency Powers in case of internal disturbances. Will that not jeopardise the 'Defence of India' apart from internal disorder in Kashmir. In the matter of Finance, Mr. Nehru has left details to be worked. That appears to be again a big problem. We should certainly say if all this is not clear, Mr. Nehru's phrase 'That Kashmir's accession is full' loses all its force. The situation calls for a clearer and bolder handling. One almost wishes Sardar Patel, the iron man of India were alive, to give strength to Mr. Nehru in solving these problems. So, it is up to the public to strengthen Mr. Nehru's hands in these delicate Kashmir problem which is at once both a constitutional and political problem.

On the whole the benefits of integration and democratization have in a large measure accrued to the former Indian States. They have acquired equal status with Part A States, a common Supreme Court, a common defence army, navy and air force, same fundamental rights, the same legal measures to enforce them and the same rights of citizenship. The people of the Part B States have acquired the sovereignty which their compeers in Part A States possess with the advent of Independent India. But much of their problems which are the legacy of the peculiar history of each State are yet to be solved. Internal administration has to be thoroughly over-hauled and nation-building activities have to be undertaken in those States to bring them on a par with Part A States. The Legislative forum is yet to grow into maturity in most of the States as the people have yet to be trained for such responsibilities. It may be added Mysore had always portrayed itself as an advanced State. So it has recently won from the Government of India exemption from the operation of art. 371. One may say this exemption could have been put off for some years. The danger is that the demand for exemption may be made by many States too soon. The Federal Union must get stronger and the States should become more steady before such exemptions are thought of.

The scheme of Part A, B, C, D States

From the above resume of the history of Indian States and Provinces we have seen that India under the Constitution has evolved a Constitutional plan for the several units of the Union. The units as at present may be conveniently classified thus as in the first schedule of the Constitution:

Part A	Part B	Part C	Part D
Assam	Hyderabad	Ajmir	Andaman and Nichobar Islands
Bihar	Jammu & Kashmir	Bhopal	
Bombay	Madhya Bharat	Bhilaspur	
Madhya Pradesh	Mysore	Coorg	
Madras	Patiala & East Punjab States Union	Delhi	
Orissa	Rajastan	Himachal Pradesh	
Punjab	Sowrashtra	Cutch	
Uttar Pradesh	Travancore Cochin	Manipur	
West Bengal		Tirupura	
		Vindhya Pradesh	

Thus we have in all nine Part A States (corresponding to the old Provinces), 8 part B States (evolved out of the Old Indian States) 10 Part C States (old chief commissioner provinces and centrally administered areas) and one part D State—in all totalling to 28 states, as against the old 562 Indian States and 10 Provinces besides other centrally administered areas. Part A States have a full fledged democratic machinery while Part B States are in the course of transition to the democratic order. They will ultimately fit in thoroughly with the pattern of Part A States except that for historical reasons their constitutional heads will be Rajapramukhs instead of Governors. As we have already adverted to, the Rajapramukhs have a special mode of being recognised and have special allowance owing to their historic position. It may be easy to extremists to by-pass them completely but then it will not be fair to them or conducive to the stability of our Federal structure.

Part C and D States will be directly controlled by the Union Government through Lieutenant Governors, Chief Commissioners or Governor of one of the States. One peculiar feature of our Units —the States is that they are not of the American pattern which are constitutionally indestructable. It must be noted that in America prior to its forging of the Federal Constitution the several componant States were real sovereign States in actual working. But in India the Provinces were mere administrative Units of the British Regime while the Indian States were creatures of autocratic Indian Rulers. No unit is immune from outright abolition under the New Constitution. Under the Constitution (vide art. 1 to 4) there can be an alteration, addition or abolition of a State or the inclusion of a new State. The President can recommend in the case of Part A and B States, any necessary alteration after ascertaining the views of the legislature of the State concerned with respect to the proposal to introduce the Bill and with respect to the provisions therein. The object of such provision may be for merely fecilitating necessary adjustments and changes and not for terrorising the States with the Sword of Democles perpetually hanging over their territorial integrity. All this is due to the incessant agitation for linguistic distribution of the units and for the need of finalizing the integration of Indian States so as to fit in as permanent and stable elements in the Body Politic. Till these are finally settled the elastic provisions of Art. 1 to 4 will be utilized for easy amendments of the territory of a State by Presidential intervention. But then it is best to urge after all these changes are soon effectively and permanently carried out, these provisions should be suitably amended so as to afford permanency to the existance of the Units. We may mention here that in the concept of States Parts A, B and C there is a well thought-out plan for gradual development. But only hurried attempt to convert B States to the position of A States on all fours or to confer more powers on C States is fraught with great danger. In fact it is an arguable point if all B States should have been given straightaway parliamentary form of Government. Only Travancore, Cochin, Mysore and Hyderabad are ripe enough for such status. The problem of finding trained personnel to run the administration in the other Federal units of Part B and C States, besides their peoples' immaturity in parliamentary work, are big factors that have to be solved sooner or later. In the State of Kashmir and Jammu there is a tall attempt for claiming full sovereignty. It is not easy to eliminate the differences between Part A and B States as they are of different origin. Part B States may rise up to the level of administrative

excellence of Part A States but its make-up will be a separate entity always. Politicians sometimes may like to do away with all such differences. But one basic factor should not be ignored that there is a covenant of agreement between the Union of India and the Ruler of Part B States. The instrument of accession is in the nature of a treaty to be observed scrupulously within the ambit of the Indian Constitution. It may not be an advantage after all to do away with the Rulers altogether as Rajapramukhs. There is what is called Tradition, loyalty, martial capacity and certain other resources available to the Union by the aid of these historic States. To think of doing away with the Institution of Rulers as Rajapramukhs will be against the honour of the India Union which has to respect its own covenants. All that should be done is to keep the B States as a separate entity up to mark on many matters in line with part A States. The ten years tutelage under Art. 371 is meant to aid the Part B States in this direction. So far as Part C States are concerned they exist at the will of Parliament which may continue or create legislatures in part C States. The executive and legislative powers given to part C States (unlike part A or B States) may at any time be withdrawn by Parliament. The question of raising all States B or C to one of A is not a mere political matter. The financial burden consequent on such transformation is indeed great on the Union of India. How far each State has developed its financial sources, whether it can by itself support the growing expenditure of administrative and legislative progress is a matter to be deeply considered by the Union Parliament. Very often even at present Part B and C States are a financial burden on the Union. But for the sake of federal unity of India the Union has to bear it. But let us not make matters worse by raising all B States to A States or C States to B States without taking all the above matters into consideration.

PART II

General Scheme of the Indian Constitution and Inter-State Relations.

The Indian Constitution has been the outcome of a comparative study of the various constitutions of the world. The Constitution-makers of India were imbued with the supreme idea of evolving an ideal Federal Constitution suitable for Indian conditions with all safe-guards to surmount practical difficulties in the light of experience gained from the Constitutional History of other countries. We have in a large measure adopted the constitutional models of Canada, Australia and Eire, while retaining the British Parliamentary practice. The preamble to our Constitution takes its impress from the American pattern. The presidential political system of the latter is however not adopted. But the American ideal of a Supreme Court to interpret the Constitution and provision for Constitutional amendments is utilised in our Constitution. Vesting of the Residuary powers in the Union rather than in the units has been specially copied from Canada; Australia has provided us with the idea of a long list of concurrent powers and the method of resolving conflicts in that sphere between the centre and the Unit. Ireland has inspired our Fundamental Rights and Directive Principles and the system of Presidential election by an electoral college. It must be remembered that our Constitution is not one organic indegenous growth but is largely shaped by historical and political factors. The British occupation of a century and more had left its indelible marks in our political institutions. But then, in a Free India composed of diverse autonomous linguistic provinces, independent native States just freed from the suzerainty of the British Crown, and the discomforting partition of India into Pakistan and Bharat, our Constitutionalists had per force to evolve a Constitution which though Federal in general character had necessarily to have also the strength of a unitary Government to control and shape the diverse forces which may at any time disrupt the unity of India. It is in this background that India's Constitution must be studied by Constitutional students and scholars; Sir Ivor Jennings, who recently delivered the Sir Alladi Krishnaswami Ayyar Sashti Abdapoorthy Endowment lectures of the Madras University in March 1952, seemed to ignore this aspect. His criticisms that our Federal Government should yield

more powers to the units ignores the practicalities of the situation. That ideal is not practised even in U. S. A. as will be shown here under. It must be noted British Canada still has a Federal system with residuary powers given to the centre.

At the head of the Republic of India there is the President and a council of Ministers led by the Prime Minister who aid and advise the President in the discharge of his functions. The President is elected by an electoral college consisting of elected members of both Houses of Parliament at the centre and the Legislative Assembly of the States. There is universal adult Franchise exercised by the Indian electorate which is nearly one twelfth of the world's population. They elect the members of State Legislatures and the Union Parliament directly. Ministers at the centre and the State are wholly responsible to the Legislature. Part A and B States enjoy full responsible Government. In six of the Part C States representative Government has been introduced by act of Parliament. The rest are centrally administered areas. Unity in administration is sought by a singly judiciary, unity in basic laws common All-India services and the development of a common language (Hindi). There is an independent judiciary (Supreme Court and the High Courts) to interpret the constitution and resolve all disputes between the centre and the States. The residuary power vests with the centre which has adequate powers to control the varied activities of the Union and State Governments. The President has enormous powers of control and in a state of emergency he can assume the full powers converting the federal structure of the Government to one of unitary pattern for all or any portion of the Indian Union according to the needs of the times. The Federal structure of the Union is clearly defined. The spheres of the authority of the Union and the Constituent Units are clearly defined by three exhaustive enumerated lists called List I—The Federal list; List II—The State list and List III—The concurrent list. From a study of the constitution it will be apparent that in the sphere of relationship by the constituent units (Part A, B, C, D States) to the Union centre, there is a marked and clear tendency of the Supremacy of the centre which seeks to control the units in the matter of finance, administration and legislation. The question is put whether in a Federal Government, the constituent units should not be more autonomous, more independent and sovereign in its dealings with the centre. The other question is whether it is practical now in the best interests of India's development to have such an ideal Federal structure.

It is therefore attempted now to discuss how far Federal Supremacy is justifiable, necessary and legal in the working of our constitution in the light of the development of the Federal systems in advanced countries like America, Australia and Canada.

I. Comparison to U. S. A. and Australia

Let us take the case of the United States of America where the Congress has only enumerated powers under Art. 1 Sec. 8, to declare War, raise armies, coin money, and regulate foreign commerce. By the 10th amendment the U.S.A. Constitution specifically vests the residue i.e., powers not delegated to the Union or prohibited to the States—in the States or to the people. This is converse to the provision in our Constitution leaving the Residuary Powers to the Central Government. Sir Ivor Jennings would like the U. S. A. model for India. It is peculiar that in U. S. A. while the powers of the Congress are enumerated the powers of the States are not enumerated. In Veazie Bank V Tenno (1870) 18 Wall 533 they are said to include "the right to pass laws, to give effect to laws through executive action, to administer justice through the Courts, and to employ all necessary agencies for legitimate purposes of State Governments." Unlike India or Australia there is no concurrent legislative list in the American Constitution. Thus it would appear on paper the Federal powers is severely restricted to what is enumerated. But in actual practice, particularly during national emergencies or when national interests required a broader concept of Federal powers, the difficulty was felt and the Supreme Court of America always came to the rescue in so interpreting the Constitution so as to meet such national contingencies. The refuge was in (i) 'the doctrine of Implied Powers,' or (ii) 'doctrine of immunity of Instrumentalities.' or (iii) The doctrine of implied prohibition.

The 1st clause in the enumerated Federal list was the key to the 1st doctrine. The 1st clause empowered congress 'to make laws which shall be necessary and proper for carrying into execution the foregoing powers of listed items 1 to 17. Thus in Macculloch V Maryland (1919) 4 Wheten 316 it was held that 'the sound construction of the Constitution must allow to the national Legislature the discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in a manner most beneficial to the people.' By this reasoning the Court allowed the Congress to assume control over 'Banking' in national interests though banking was not a listed Federal item.

The implied powers were ferretted out of the listed item 'coinage.' The States' monopoly of Bank was thus made subject to Federal control by judicial interpretation. Again in Pensacola Tel. Co. V W.U. Tel. Co., (1877) 96 U.S.I. judicial interpretation of the commerce clause gave an implied power to the Federal centre to regulate communication by Telegraph Telephone or Wireless. Steward Machine Co., V Davis (1936) 301 U.S., 548 was yet another instance whereby the implied power of the Congress was recognised to enact social security measures such as unemployment and old age pension under the power to tax and to provide for 'the general welfare.' Another outstanding feature of the march of judicial interpretation in tune with national requirement was when the supreme court in United States V S.E. Underwriters Association (1944) 322 U.S. 533 reversed its Seventy five years' old policy by excluding Insurance from Federal control. The refuge was again the 'commerce clause' which power was construed as "a positive power. It is the power to legislate concerning transactions which reaching across state boundaries affect the people of more states than one..........This federal power to determine the rules of intercourse across State lines was essential to weld a loose confederacy into a single indivisible Nation." It was further felt that 'insurance touches the home, family and The Occupation for Business of almost Every person in the U.S.A. and this was discovered as of sufficent national import as to circumvent the letter of the Constitution by invoking the doctrine of implied powers. Thus the old pride of U.S.A. that the Government by the centre was the exception and the Government by the States was the rule has been reversed by the March of events from 1935 to 1952. The Supreme Court has cleverly removed substantially all restrictions upon national power and in the words of Mr. Dodd an American writer—'The scope of national authority has become a question of Governmental policy and has substantially ceased to be one of constitutional law." Mr. Ivor Jennings is thus thoroughly answered by the above statement of the Constitutional position of his ideal of State Supremacy in a Federal Constitution. It may be added this theory of 'Implied powers' is thoroughly unnecessary for the Federal systems of Canada and India where besides the residuary powers being vested in the centre, there are double enumeration of powers such as Federal and State items. India has another string to it's bow in the long list of concurrent powers on the analogy of Australia.

Under the 2nd doctrine..........'Immunity of Instrumentalities' as propounded in Macculloch V Maryland (1819) 4 Wh

316 the Supreme Court of U.S.A. viewed that "when two separate Governments are established in a Federal Constitution each with a limited jurisdiction, the power of each Government shall be construed as being under an implied limitation that shall be so exercised as not to impair the functions allotted to the other Government." A similar limitation would apply as regards the Federal legislature for 'The power to tax involves the power to destroy.' In this case applying the above principle it was held that a state cannot tax the 'agencies or instrumentalities' of the Federal Government (e.g. a Bank chartered by the Congress) as that would cripple the functions of the Federal Government. This doctrine has been rejected in Canada on the ground that the validity of each legislation has to be tested intrinsically and not with reference to whether it would hamper the functions of another Government (vide John Deera Plow Co., V Wharton (1915) A.C. 350). In India too our Constitution does not permit this doctrine of immunity of Instrumentalities. The exemption of mutual taxation is specificially provided under Art. 285 and 289.

Outside these provisions the Federal and State legislature have full powers to deal with all subjects covered in their respective lists, the only qualifying rule being that they do not controvert other clear and unambiguous provisions of the Constitution. In Kishori V King AIR 1950 FC 69 it was held that simply because a policy of total prohibition may lead to a fall in import of foreign liquors and consequential fall in central revenues, a State cannot be denied its power under entry 8 List II to control possession, transport of foreign liquor though it may incidentally defeat the power of parliament to regulate import of foreign liquor across customs frontiers under entry 41 List I. The test of encroachment in another Legislative Field is by application of the 'pith and substance' doctrine. As laid in 1947 FCR 28 Prafulla V Bank of Commerce, the Pith and substance of the impugned Act is judged by the extent of encroachment; 'Degrees of invasion is no test for questioning the validity of the Act.'

The entries in the three *Legislative Lists* define only the fields of Legislative action. They do not prescribe the conditions subject to which the Power is to be exercised. A legislature empowered to legislate on a subject included within a particular list will sustain its power whether it is derived from one entry or more than one entry. Sometimes it may become important to determine under which entry the legislature derives its power to pass a particular Act vide Suryapal Sing V Government of Uttar

Pradesh AIR 1951 All 674. In the same case it was held that the words 'subject to the provision of entry 42 of List III' used in entry 36 in List II do not by themselves mean that the state legislature cannot legislate with respect to acquisition of property unless there is a public purpose and only on payment of compensation. The safeguard against confiscatory acquisition of property is to be found in Art. 31 (2) of the Constitution which ensures that no person can be deprived of his property unless, the acquisition is for a public purpose and compensation is given. The provisions of Art 31 (2) are not fetters on legislative competence but are conditions of legislative effectiveness. The only connotation is that the State legislature cannot legislate under entry 36 List II unless the acquisition is for purposes which are for the purposes of the Union. The other limitation is that the Union Parliament may legislate with regard to compensation and the form and manner in which such compensation is to be given notwithstanding the fact that laws with regard to acquisition or requisitioning for purposes other than for purposes of the Union may be enacted by the State Legislature. Thus the legislative competence of the State Legislature under List II entry 36 is not controlled by Entry 42 in List III.

The 3rd doctrine of Implied Prohibition has been utilised by America for the proper execution of some power expressly granted to the Federal Government—vide U.S. V De Will (1860) 9 Wall 4 where the Congress' power to regulate trade among States was construed as implying prohibition regarding internal trade by State except indeed as a necessary and proper means of carrying into execution some other power expressly granted or vested. But Canada or India do not need this doctrine where there is double or treble enumeration of powers respectively.

Sir Ivor would urge that it was no good to copy the formula contained in the Government of India Act of 1935 where the Federal centre was made to be strong as the British Crown was a stranger to India and that once India became independent the Federal structure should be real. In Ramakrishna V Municipal Committee AIR 1950 S. C. 11 the Supreme Court of India has refused to apply the doctrine of Implied Powers to give strength to the Federal Power at the expense of Provincial power. It must also be seen that if the Supreme Court of U.S.A. has to buttress the Congress with power by its interpretative Jurisdiction and the U.S.A. of 1952 desires to have a strong federal centre whatever may be the letter of the constitution then why not we applaud the

Indian Constitution-makers in giving in a straight-forward manner from the start, all the powers to the centre that are shown to be necessary by up-to-date experience.

Regarding Australia, Stark J. in South Australia V The Commonwealth 65 CLR 373 stated 'The Government of Australia is a duel system based on the separation of organs and powers. The maintenance of the States and their powers is as much the object of the Constitution as the maintenance of the commonwealth and its power. Therefore it is beyond the power of either to abolish or destroy the other." The Australian Constitution directly gives the commonwealth Parliament, the power of incidental legislation under Sec. 51 (XXXIX). Despite the wide power given to the States in Australia the original rigidity of the Federal Power is diluted by judicial Interpretation—always resulting in the all-round recognition of Federal powers, vide Australian railway Union V Victorian Railways Commissioners and others (1930) 44 C.L.R. 319; In 'The uniform Tax Case'—South Australia and other V The Commonwealth and another (1942) 65 CLR 373, it was held that though the commonwealth cannot directly prohibit the states from exercising their Constitutional functions it can indirectly exclude the States from a field of Taxation under The Grant Power. This was on account of War Emergency conditions. The defence of the country was on the centre and for this its finance had to be strong and to this end Federal Law controlling taxation or banking was necessary.

So we find that provision had better be clearly made in a written constitution for all the emergencies and conditions detailed in the above paras. That is why we have in India, a peculiar Federal Structure which is federal in normal times and unitary in times of emergencies. Hence it is we find in our Constitution clear provisions which enable the centre in holding the units together. Such constitutional devices may be thus enumerated as the long list of federal and concurrent powers, vesting of the residuary powers in the Union, a united judiciary with a supreme court to interpret the Constitution, a single citizenship for the entire country, an all-India administrative service, a common civil criminal Law for the whole country, the emergency powers of the President by which he can virtually convert the Federal State into a unitary one in times of grave emergencies and need. The constitution of India is a unique combination of rigidity and flexibility and is so adaptable according to the needs of the political or economic situation in the country.

The original idea of the constitution-makers was probably to vest the residuary powers with the States. But during the deliberations of the Constituent Assembly, conditions in the country changed; there was widespread unrest following the partition of India. Native States, groups of vested interests and Muslim India threatened to ruin the unity of India. It was in this context, the Constituent Assembly decided ultimately to vest the residuary powers in the centre (by art. 248) making it fool proof against all fissiparous tendencies of interested groups or undeveloped States in a vast continent like India. They hit upon a brilliant idea of providing three lists to avoid all friction between the centre and the States. The Union list covered 97 items including defence, foreign affairs, Banking, currency, coinage, Union duties and taxes, The 2nd list called the State list covers 66 items over which only the State Legislature has power. These items include public order, police, local Government, public health, education, state taxes etc. The 3rd list called the concurrent list gives concurrent powers to the Union and the State legislatures over 47 items such as criminal law and procedure, civil procedure, marriage, contracts, ports, trusts, labour welfare, social insurance, economic and social planning etc.

2. *Federal Supremacy in Legislative Field*

Art. 246 (3) declares that the power of the State Legislature to legislate regarding matters covered by the State list has been made subject to the power of Parliament to legislate in Union and concurrent list. If there is a repugnancy the law of the Union will prevail over that of the State in the concurrent sphere. A State law of the States in Parts A and B, if assented to by the President after reservation prevails over prior union legislation. But the Union Parliament may subsequently vary or repeal the State law so made. (Art. 234).

The power of Federal supremacy in the legislative field is further laid down in the various articles 249 to 253, 356, 357 etc., of the Indian Constitution. The Union Parliament can thus legislate on a state subject if the Council of States declared by a resolution passed by a 2/3 majority of its members present and voting that it is expedient in national interest. The duration of such a resolution is one year normally but it may be renewed to further periods by a specific resolution of the Council of State from time to time (Art. 249). Seondly during an emergency period so declared by the President under Art. 352, the Union Parliament can legislate on any state subject for the whole or part of the territory of India (Art. 250). Thirdly in case of the failure of the Constitutional machinery in a state the President may by proclamation authorise the Union Parliament to legislate for that State in respect of State subjects (Art. 356 1 (b). Fourthly the Parliament can legislate on state subjects for two or more States at the request of their legislatures by resolution (Art. 252). Fifthly the Parliament has power to make any law for implementing, any treaty or international agreement even if such legislation may encroach upon purely state subjects. (Art. 256).

It is well to remember that in the Australian Constitution there is no similar treaty-making power. Sec. 51 (XXXIX of that Constitution merely gives the power to the commonwealth over external affairs. Only by judicial interpretation (vide King V Burges (1936) 55 CLR 608) was it possible to find the power to enforce international agreements despite its effect on State rights in Australia. In U.S.A. Art. VI of the Constitution gives adequate powers but yet recently the State of California illtreated the Japanese despite the Federal agreement to the contrary. Warned by this experience a specific provision has been made in Art. 253 of the Indian Constitution giving legislative power to the Union Parliament for giving effect to International agreement. It is well to remember that the American and Australian Constitutions have analogous provisions to Art. 252 of the Indian Constitution. But they do not have in their constitution any specific Federal power to legislate on a state subject during emergencies. However their courts have helped the Federal Government in times of War to assume such powers. The verdict of competency thus lay with the Courts and not with the Federal Legislature—vide Andrews V Howell (1941) 65 CLR 235 Exparte Victoria (1942) 66 CLR 488. Thus federal legislature was never allowed to assume powers over state subjects. In India all that has been done is to clarify the issue by a direct provision in the Constitution (Art. 249 and 250) instead of dubiously leaving it to Courts. Similarly in U.S.A. there is no analogous provision to art. 356 of our Constitution. The State Constitution is never suspended there. But this was circumvented thus. If there was resistence by a State to the execution of any law made by the Congress (vide In re Debs (1895) 158 U. S. 564) or if federal authority was questioned by a state Government the national Government may exercise its military forces to compel the State to obey its laws, so as to maintain the 'Indissoluble Union' vide The Protector 12 Wall 700. United States V

Anderson 9 Wall 56. Instead of this 'armed forces' invasion of a State we have in the Indian Constitution powers to suspend State rights and assumption of powers by the President during emergencies.

Even in America though the States are vested with all the reserve power yet in practice they are so used so as not to conflict with the needs of the national Government at the centre. Marshall C. J. stressed one aspect particularly in Gibbons V Ogdon (1824) 9 Wh. 195 where he said "The Genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the nation and to those internal concerns which affect the states generally but not to those which are completely within a particular state which do not affect other states, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the 'National Government.' With reference to Taxation no State can without consent of the Congress levy any tax on tonnage (Art. 1 Sec. 10 (3) nor on imports and exports (Sec. 10 (2); nor can a state coin money, emit Bills of credit, make anything but gold and silver coin a tender in payment of debt" (Sec. 10 (1). Furthermore no state can enter into foreign and inter State agreements (Art. 1 Sec. 10). This prohibition against interstate compacts without the specific consent of the congress is particularly devised to prevent the poisonous growth of political combinations which may at any time strike at the stability and authority of the centre (vide Virginia V Tennessee (1893) 148 US 503.

In Australia the Commonwealth Parliament exercises both exclusive and concurrent power. The want of a regular concurrent list is overcome by interpretation of Sec. 107 and 108 of their constitution. The theory of unoccupied field is invoked for the jurisdiction of state legislation in the concurrent sphere. Once a Federal Law is passed on the same subject the State Law shall lose its legal force. Thus Sec. 51 enumerates the 39 heads of subjects on which the Dominion Government may legislate. The exclusive powers are enumerated in Sec. 52, 90, 111, 114 and 115 which include the seat of the commonwealth Government, places acquired for public purposes, Federal public service, coinage, surrendered territory, Naval and Military defence and force, customs, excise and bounties. The supremacy of the centre was particularly stressed in the Engineer's case. (The Amalgamated Society of Engineers V The Adelaid Steamship Co., Ltd. and others (1920) 28 CLR 129 HC) where the dominant position of the commonwealth was attributed not to its constitutional powers alone but also to the combination of those powers and its superior finance. In James V Commonwealth (1936) A.C. 378 at 611 was stated 'The powers of the States were left unaffected by the constitution except in so far as the contrary was expressly provided; subject to that, each state remained sovereign within its own sphere.'

In Canada as the residuary power vests in the commonwealth Dominion Parliament, as in India, the Dominion parliament may traverse on subjects even outside Sec. 91 (exclusively Dominion) so as to entrench on matters pertaining to the province. vide A. G. Canada V A. G. British Columbia 1930 A.C. in 87 provided it is in the national cause. But if in 'pith and substance' the legislation relates to a provincial subject in Sec. 92 the Dominion Parliament cannot usurp power under the residuary clause in Sec. 91 by reason of 'National importance' or special emergency—vide A. G. of Canada V A. G. of Ontario AIR 1937 P.C. 89. But if there is any ancilliary or incidental connection with a Dominion subject, then state legislation on that can operate only so long as the Dominion legislation does not step in.

The Government of India Act 1935 followed the Canadian pattern in substance. It is also besides, an admixture of both Australia and Canada. Like Canada the powers at the centre and the unit are fully enumerated but unlike it, it vests the residue not in the Dominion but in the Governor-General. Besides it has a long concurrent list where it follows Australia for providing the method for reconciling and resolving repugnancy in the concurrent field. But Australia has residuary powers vested in the States. In the Government of India Act all the three lists Federal, Provincial and concurrent are exhaustively dealt with leaving practically no residue. Sec. 107 of the Act provides that the Federal law will prevail in case of repugnancy in the concurrent sphere

It may be noted that in Nagalinga Nadar Sons V Ambalapuzha Taluk H.L.C. worker's Union AIR 1951 T.C. 203 occasion arose to declare the principle that the central law prevails over the State law. The contract Act, The Industrial Disputes Act 14 of 1947 as amended by Act 48 of 50 thus replaced the State Law on the subject i.e., Act XVI of 1950 (called The Travancore—Cochin Industrial Disputes Act).

3. *Analysis of the Legislative relationship between States and the Union*

We have already adverted to the main principle that this distribution of Legislative powers between the Union and the States is evolved in our Constitution by the enumeration of legislative lists Union, State and concurrent, each covering a field of 97 items, 66 items and 47 items respectively. If there is a conflict in the concurrent field per Art 254 normally the Union Law overrides the State Law to the extent of that conflict. But a State Law if it has the assent of the President under Art. 200 after reservation supersedes any prior Union legislation. The Union Parliament may subsequently however vary or repeal such State Law.

Judicial adjudication in Inter-State Disputes

The question of repugnancy and conflict between State and Union law is not one of executive, administrative, or legislative decision but is wholly left to judicial determination vide Sibanath V Portor Air 1935 Cal 317. Under Art. 131 the Supreme Court has jurisdiction (a) to decide any dispute between the Government of India and one or more states; (b) between the Government of India and any state or states on one side and one or more states on the other; (c) between 2 or more states inter se in so far as the disputes involve any question on which the existence or extent of a legal right depends. But there is a proviso that this jurisdiction shall not extend to a dispute to which a part B state is a party if that dispute arises out of treaties or covenants entered into before the commencement of the Constitution or if it refers to a dispute to which any state (part A, B or C) is a party if the dispute is in respect of any treaty agreement or covenant prohibiting such adjudication by the Court. Under the former category come the agreements entered into by the Union Government, after this constitution came into force, with the Nizam of Hyderabad, Maharaja of Mysore, covenants for formation of Madhya Bharat, Patiala and East Punjab States Union, Rajasthan, Sowrashtra, Travancore, Cochin etc. But in such cases all disputes can be referred to the 'opinion' of the Supreme Court by the President under Art. 143(2). The prohibition under Art. 131 is with reference to adjudication under the original jurisdiction of the supreme court.

In State of Seraikella V Union of India A.I.R. 1951 S.C. 253 it is made clear that the jurisdiction of the Supreme Court has been confined to matters stated in Art. 131 to 136 and that Art. 363 provides that notwithstanding any other provision in the Constitution neither the Supreme Court nor any other Court will have jurisdiction to adjudicate in respect of any dispute arising out of any provision of the treaty agreement covenant, engagement or sanad which was entered into or executed before the commencement of the constitution and which has been continued in operation after such commencement. The contention of the Rulers of former Eastern agency that merger ordered under the States Merger (Governor's provinces) order 1949 was a breach of the terms of the Instrument of Accession executed by the Rulers and accepted by the Governor-General in August 1947 was negatived in that case not only on merits but also on the ground that the Supreme Court had no jurisdiction to hear the same.

In all cases where disputes are resolved by adjudication of the Supreme Court, the Court will have to necessarily interpret the terms of the division of powers embodied in the Constitution. Such judicial interpretation in U.S.A. and Australia has tended towards a widening of the scope of the Federal Powers which Justice Marshall used to describe as 'constructive Interpretation.' Boundary disputes can also be adjudicated as between the Government of India and the States or the States Inter se. The Supreme Court has to hold the scales even between the various parties to the Union. The jurisdiction of the Supreme Court is excluded in the following matters:—

(i) Disputes specified in the proviso to Sec. 131, discussed above;

(ii) Inter-State water disputes. This can be resolved by Parliamentary legislation appointing a statutory Tribunal under Art. 262;

(iii) Matters of Inter-State Finance which have to be referred to the Finance Commission under Art. 280 to be constituted by the President of the Union;

(iv) Adjustment in respect of certain expenses and pensions between the Union and the States or the States inter se by agreement or arbitration under Art. 290.

The special jurisdiction of the High Court of each State can be invoked by Writs under Art. 226 of the Constitution in matters of rights arising under the Constitution or an appeal to the Supreme Court is provided under Art. 132 in the matter of interpretation of the Constitution. The jurisdiction of Union Parliament to legislate covers the entire territory of India while that of the state is confined to the State territory (Art. 245). Art. 246 enumerates the three legislative lists. The residuary power vests in the union (Art. 248). In addition to the Supreme Court, the Parliament can establish additional courts to adjudicate on matters enumerated in the Union List (Art. 247). In an emergency due to National Interests Parliament can legislate with respect to a matter covered in the State List provided the Council of States declares by a resolution passed by 2/3 majority of its members present and voting that it is expedient to do so. (Art. 249). Such a resolution will remain in force for one year at a time but it may be renewed any number of times by the Council of States. But laws thus passed will cease to be in force after six months of the expiry of the operative period of the resolution to the extent of the normal incompetency of the Union Parliament in the matter. Again under Art. 250 if there is a proclamation of emergency promulgated by the Parliament under Art. 352 in operation, then the Union Parliament can legislate on any subject for the whole or part of India. These laws cease to be in force only after 6 months of the expiry of the period fixed in the proclamation. Art. 251 declares that in case of inconsistency between State and Union laws passed under Art. 249 and 250 the latter will prevail. Art. 252 empowers Parliament to legislate for 2 or more states by consent at the request of their legislatures by resolution. Such legislation can be adopted by other States also by a resolution of their legislatures. Art 253 empowers Parliament to make any law for implementing any treaty or international agreement even though such legislation may impugn on purely state subjects. Art. 255 safeguards the validity of all statutes of States (Part A & B) against any technical flaws such as want or recommendation of the Governor or of the Rajapramukh. These can be cured by subsequent assent either of the Governor-Rajapramukh or President; where the recommendation should be by the President, the latter can give his assent even subsequently.

Under Art. 356 (1) b in case of a failure of the constitutional machinery of a State the President can by proclamation authorise the Union Parliament to legislate for that State in respect of State subjects. Again under Art. 357 (1) & (2). The Parliament instead of exercising this power can confer it on the President and authorise him to delegate it to any authority specified by him. But laws thus made will cease to operate after one year of the expiry of the proclamation.

Thus we see that the distribution of the legislative power between the Union and the centre, bring out a harmonious relationship between them, with a definite tendency to make the Federal power supreme in the interests of national strength and solidarity. Even in America where all legislative powers are vested in the congress and the executive power with the President and the judicial power in the supreme court the separation of powers is so worked out as to make the centre strong. In India too there is a sort of vesting of the three powers in the Union Parliament, the President and in the Supreme Court of India. It will be seen even in America that the independence of these three units is only qualified vide Mcgrain v. Daugherty 273 US 135. It was there postulated that despite the separation of powers and though as the ultimate judicial authority the Supreme Court is clearly independent for their existence from the other two powers, complete independence and separation between the branches, however, are not attained or intended as is easily demonstrable from the other provisions of the Constitution and the normal operation of the Government. For example by affirmative action through the veto power of the executive, one more than third of either house may defeat all legislation; one half of the house and 2/3 of the Senate may impeach and remove the members of the judiciary. The executive can reprieve or pardon all offences after their commission either before trial, during trial or after trial by individuals or by classes, conditionally or absolutely without modification or regulation by the congress. Negatively one house of the congress can withhold all appropriations and stop the operations of Government. The Senate can hold up all appointments, confirmations of which either Constitution or a Statute requires, and thus deprive the President of the necessary agents to which he is to take care that the laws be faithfully executed. These are some of the instances of positive and negative restraints to each of the three branches of Government — all indicating that the independence of each is only qualified. Such conditions also exist in the provisions of our Constitution. Therefore it must be clearly understood "that the constitutional distribution of the functions of the Government's three branches and the relationship of the Union with the States should be so construed so as to achieve the great ultimate objective, the most effective and harmonious working of the system. The separation of powers was made for man not man for separation of powers." It must be understood that the separation of powers is not present in our Constitution in the American sense. The legislative power has not been vested as such in Parliament or State Legislature Yet the Legislature may delegate only the function of making subordinate legislation and can never part with its power of "making Laws" itself given to it under Art. 245. Subordinate and conditional legislation is different from delegated legislation. The former two do not efface or affect the power of the legislature to make laws.

4. *Federal Supremacy in the Administrative Field*

The Union administrative control over the States is five-fold.

(i) By directions to state government (Art. 256, 257 353);
(ii) „ delegation of Union function (Art. 258);
(iii) „ an All-India service (Art. 312);
(iv) „ grants-in-aid (Art. 275);
(v) „ protection to states against external aggression or internal disturbance (Art. 313).

The idea of the Union giving directions to the States is foreign and even repugnant to American constitutionalists. Such a provision in the Indian Constitution is one of historical growth and the urgent need of guiding the units which do not possess the qualities of a fully developed State as obtaining in U.S.A. It was there a union of sovereign states already functioning so, even prior to the passing of the Constitution of U.S.A. In India the States have no such history, or organized growth or uniform development and experience. They were merely administrative units of the British period. The Government of India Act 1935 gave a federal structure shaping these very units as States of the Federation. In such a context, to keep these units well knit it is just and necessary that the Federal Government should come to their aid.

The executive power with reference to Union subjects is that of the Union Government. But in the sphere of concurrent subjects their administration is normally vested in the States in their respective territories, unless express provision is to be made to the contrary by law of parliament. Even in the field of Union subjects the States may continue the existing arrangement for the exercising of authority till the Union Parliament decides otherwise (Art. 73). Thus in some of Federal matters like customs, central excise, income-tax, railways, post office, they are directly administered by the Government of India but in the administration of the rest and the execution of Union laws it is generally entrusted to States' authorities. Lest the States should discharge their duties in enforcing Union laws or administering Union matters in an unsatisfactory manner the constitution enjoins them to exercise their authority in such a manner as to ensure compliance with Union laws and authorities. It will be seen that in India the States exercise delegated authority over some aspects of Federal administration whereas in America this is not so. But the Union's exercise of this power is subject to directions issued by the Union even in respect of matters covered by List II. The object is to prevent conflict in the executive policy of the Union and that of the State. The policy of the Union in matters covered by Lists I and III may not be disturbed by the action of any State under cover of List II (vide Art. 73). When there is a proclamation of emergency in operation, the Union Government can issue directions to State authorities Art. 353 (a). But it is the duty of the Union to protect States against external aggression or internal disturbance and to ensure that the State Government is carried on normally and satisfactorily according to the provisions of the Constitution. " Defence and Military " are Union subjects unler List I and it is the paramount duty of the Union to maintain them for internal security and for external purposes. Under Art. 258 the Union can delegate some of its powers to the States. Under the Government of India Act 1935 (Sec. 124) such delegations could be of both the executive and legislative powers (vide Amirkhan v. State AIR 1950 All 450). But under the Constitution it can only mean administrative functions as Art. 258 is included under Ch. II 'Administrative Relations' in Part IX of the Constitution. It is Chapter I that deals with legislative function.

In America there are two distinct services called the Federal Administrative Service, the Federal Courts, the State Service and State Courts. But that is very costly and India cannot afford to keep such separate services to serve the entire country. India has however one All-India service. The State services have also delegation of powers from the Union in certain specified matters. We cannot afford too many Federal Courts and so we have one Supreme Court. The various High Courts also are vested with jurisdiction to interpret the Constitution subject to the appellate verdict of the Supreme Court. The Supreme Court has been given a width and variety of jurisdiction unknown in other constitutions. The unification of the judiciary is more thorough in India with the Supreme Court, High Courts, and Subordinate Courts each controlling the next.

Apart from conditions covered by emergencies under Part XVIII of the Constitution the Union has power to direct the State Government (i) to ensure due compliance of Union and existing laws (Art. 256), (ii) to ensure that the exercise of executive

power of the State does not interfere with the executive power of the Union Art. 257 (i); (iii) to secure construction and maintenance of means of communications of military importance by the State (Art. 257); (iv) and also to ensure protection of railways within a State (Art. 257 (3). The Federal centre in USA and Australia also posses such powers to protect National interests. Despite all this supremacy of the Union, there is substantial non-interference in the normal working of the State Government. Even under the Government of India Act 1935 as laid down in Subrahmanyam v. Muthuswami AIR 1941 F.C. 47 the 'resort to residual power should be the last refuge. It is only when all the categories in the three lists are absolutely exhausted that one can think of taking upon a non-descript.' So it was even then found that State Autonomy was real with such lists as the State List II and the concurrent List III. Under the Constitution the position of the States is even better still. The Governor acting in his special responsibility is now merely the agent of the President of the Union who is the accredited people's President elected by the system of an electoral college. It is only the President that can declare an emergency under Art. 356 in case of non-compliance of direction by the State. But under the Government of India Act 1935 the Provincial Governor himself can act on his special responsibility. Though a Federal Constitution gives sovereignty to the component States within their limits, complete isolation is not possible under modern conditions to safeguard that very internal sovereignty and independence. The States are bound to carry out its responsibilities towards the Union and other States: (i) by recognising the public acts records and proceedings of the Union (Art. 261) and other States; (ii) by rendition of criminals interstate (entry 4 of List III); (iii) by extra-judicial settlement of disputes (Art. 262); (iv) by co-ordination between States (Art. 263); (v) by giving immunity from mutual taxation (Art. 285-289); (vi) by ensuring of Inter-State trade, commerce and intercourse (Art. 301-307). The Union has also powers to regulate certain matters affecting the States such as Superintendance, direction and control of all elections, Federal and State, by vesting it in an election commission appointed by the President (Art. 324). Though the High Courts are State Courts their constitution and organisation is a Union subject (Art. 217). The Union President has control over the State Public Service Commission (Art. 317) and over the welfare of scheduled Tribes and Backward classes. (Art. 339).

In the field of federal finance the ideal would be a clear-cut division of sources of revenue between the federal and State Governments so as to make each one of them independent of the other. The nearest approach to success in this direction is only U.S.A. But elsewhere in Canada and Australia the centre makes contributions to the resources of the Union while the converse is the case in Switzerland. Even in U.S.A. in recent years Federal grants in aid to States have come into vogue from out of the large income derived from federal taxes to implement the growing expenses of the States Government. Naturally in a poor country like India despite the division of financial resources under the three lists of powers, the States get far less than what they actually are in dire need. Hence these have to be supplemented by special provisions in the Constitution such as Art. 268 to 281. An intricate dovetailing of the Union and State finances is the result. This includes the duties levied by the Union but collected and absorbed by the State, taxes levied and collected by the Union but actually assigned to the States, Union taxes collected by the Union but distributed or assigned to the States, grant-in-aid from the Union, etc.

There are some mutual obligations and prohibitions on the Union and the States. The Union and the States should not discriminate between States in matters of trade and commerce. Art. 301 to 303 enjoin freedom of trade and commerce throughout India subject to only such limitations as are necessary in public interest. It is the duty of the Union to protect against external aggression and internal disturbance and also to see that the Governance of the State is in accordance with the provisions of the Constitution.

In the field of constitutional amendment, provisions, relating to citizenship, continuance or alteration of individual States and in all those particulars which do not involve rights and powers of States, are amendable by the unilateral action of the Union Parliament and where such rights and powers are involved by the bilateral action of the Union and State legislatures.

Thus it will be seen that the Indian Federal Constitution is nearest in approach to the Canadian Constitution in its form. The Australian federation grants a more exalted place to the States; the list of federal and concurrent powers in Australia is far smaller, the residuary power vesting in the States. The States of U.S.A. and Switzerland are nearly sovereign within their own

sphere and an 'indissoluble Union' is guaranteed. But in actual practice in all these countries the modern trend is to make the federal position stronger to combat inter-national political and economic conditions. But in India the Constitution which is rightly criticised as rather prolific has however provided for all contingencies. The principal element of liberty in our Constitution is found in the Parliamentary and responsible form of Government, universal suffrage, one citizenship, adequate safeguards preventing discrimination between individuals, a genuine and strong federal Government, and an independent and exalted judiciary. In essence our Constitution is one of liberty than of power. Federal supremacy as it obtains to-day in India is more to safeguard the liberty of and to encourage the progress of the individual and of the component States than to destroy either. Discipline heralds order and advance. This is a really fundamental doctrine to be observed in India which is yet politically and economically not very mature. Scholars who would like an ideal Federal system with sovereign units in India should first bring about such a developed State of things in India which would justify such a change. Till that stage of development is reached we must need have the present strong federal structure and federal supremacy.

Inter-State Councils

Let us now dilate a little on the constitution and functioning of Inter-State Councils.

The power vested with the President under Art. 263 enables him to ensure co-ordination of Inter-State activities and relationship by the appointment of a council, when public interest demands it by the appointment of an Inter-State Council which (a) can enquire into and advise upon disputes which have arisen between States; (b) can investigate and discuss subjects in which some or all of the States or the Union or more of the States have a common interest, e.g., forestry, public health, agriculture, etc.; (c) or make recommendations upon any such subject and in particular, recommendations for the better co-ordination of policy and action with respect to that subject. The President shall also prosecute the duties, organization and procedure of such Inter-State Council. This Council can only enquire and advise. It has not the power of judicial decision as possessed by the Tribunal appointed under Art. 262 relating to disputes re.: Inter-State waterways. But the report of the Inter-State Council can resolve all difficulties of the States and by their own efforts they can avoid litigation by respecting the findings of the Council. But the creation of such a council does not oust the jurisdiction of the Supreme Court under Art. 131 to decide all disputes between the States. This Inter-State co-ordination under Art. 263 is complimentary to the Union's power in legislating on Inter-State matters by consent of the States concerned under Art. 252. This Inter-State Council may be a mere adhoc affair instead of a permanent body as indicated by the words 'at any time' in article 263.

This provision for co-ordination between Inter-States finds a parallel in the Australian Constitution. In America there is no such specific provision. But the Congress has established an 'Inter-State Commerce Commission' by appropriate provision in the Inter-State Commerce Act of 1887. This was done under the 'Commerce power'. But generally in U. S. A. the Constitution has forbidden one State from entering into a compact with another under Art. 1 Sec. 10 (3). Often litigation has determined Inter-State disputes whereas in Australia they would probably be settled by agreement (vide New York v. New Jersey 256 US 269 and Kansas v. Colorado 206 US 46). But in Australia Sec. 191 of the Constitution provides for an Inter-State commission with powers of adjudication relating to trade and commerce and of the laws made thereunder but as the High Court held in N.S.W. v. Commonwealth (1915) 20 CLR 54 that the Inter-State commission so appointed under Sec. 101 was not a judicial tribunal, but a mere fact-finding commission to report to Parliament; the whole scheme fell through as a dead letter. Under Sec. 71 no bodies other than Courts can be vested with judicial power in Australia. Nevertheless in Australia Inter-State co-operation has been an indispensable instrument of Government and has achieved good results such as the formation by Inter-State discussion the National Works Council, the National Council of Agriculture, the Australian Egg Board, Council of Scientific and Industrial Research and the Commonwealth Department of education. Specific agreements were entered into between the States regarding common electoral roll and on forms of Income-Tax assessment; the Agreement between Victoria State and New South Wales regarding the railways in S. W. Districts of N. S. Wales, the 1946 agreement between New South Wales and Queensland for making water available for stock and domestic purposes in N. W. of the New South Wales from the rivers in Southern Queensland; the agreement between the commonwealth and New South Wales and Queensland by the River Murray Waters Act of 1915 and 1934 whereby facilities were provided for navigation and locking of the river Murray and River Darjeeling, thus avoiding litigation unlike USA and the Graftson South Brisbane Railways Act of 1924-31 resulting in the construction and maintenance of a railway on one gauge from Grafton via Kejogle to South Brisbane. There was another kind of co-operation between the union and the States by means of grants such as The Federal Aid Roads Act of 1924 and the Flour Tax Act 1938; the Commonwealth Aid Roads and Works Act 1947 gave a scheme making substantial grants available to the States from the Commonwealth under certain conditions for building roads in rural areas. Lastly we have the Sugar Agreement whereby the Commonwealth entered into a pact with the State of Queensland enabling her lands to be cultivated by white labour at specified wages producing all raw sugar with the financial aid of the centre. This enabled quick Internal Sugar Production. Under Sec. 51 (1) Parliament has power to prohibit import of sugar into Australia.

India can as well copy the Australian method of Inter-State co-operation. The aid from the centre may be made available to the units for starting of Industries all over the country for the enrichment of the nation as a whole. Inter-State consultation can also develop in the direction of Scientific research national schemes of public utility, improved agriculture, education, forestry, railways, industries, etc. No doubt we have made some beginning in these directions but much has yet to be achieved.

5. *Inter-State Disputes regarding Waters*

The impediment of Sec. 71 in Australia which prohibits conferring of judicial powers on bodies other than Courts is absent in our Constitution. So in respect of disputes such as waterways under Art. 263 a Tribunal clothed with judicial powers by Parliament can be created. The specific provision in the Constitution with reference to Inter-State dispute regarding waterways is found in article 262 whereby Parliament is given specific power to arrange for special Tribunals to adjudicate on any dispute or complaint with respect to the use, distribution or control of waters of or in any Inter-State river or river valley. Parliament can also give all the powers to these special courts ousting the jurisdiction of the Supreme Court or any other Court in such matters. Under the Government of India Act 1935 under Sec. 131 the Governor-General acting in his discretion was the final arbiter of such disputes as "Interference with water supplies," though he may call in the aid of an advisory commission appointed by him. Then it was an exclusively provincial subject (entry 10 of List II, Govt. of India Act) but under the New Constitution though it is listed as Entry 17 List II in respect of "water, that is to say water supplies, irrigation and cannals, drainage and embankments, water storage and water power it is subject to the provision of entry 56 of List I. In the Union List is given "Regulation and development of Inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by a law to be expedient in the public interest.

Thus the Union Parliament is given the power to pass laws for regulation and development of waterways throughout the territory of India. Though the States may have internal sovereignty when conflicts arise between States regarding the user of water flowing through their territory both in respect of the utilization of the water by the State of origin or any other State through which it flows, under the Constitution such conflicts can be resolved either by resort to action in the Supreme Court under Art. 131 by the affected State, or get it adjudicated under Art. 262 through a special Tribunal or by an Inter-State Council (administrative body) to investigate and recommend regarding all matters in dispute.

In India few rivers have their origin and end within a State. During the British period, British India was always a co-riparian owner. Except in Travancore State, the rights of irrigation was almost shared between British India and the States. No codification of the law in India regarding the complicated condition of the various river systems was feasible though attempted from time to time. In the northern India canal and drainage Act, the preamble declared that the Government is entitled to use and control for public purposes the waters of all rivers. The States would not accept this theory of paramountcy in respect of their waterways. Thus controversies such as the Sutlej irrigation scheme, the Jammu & Kashmir disputes with the Punjab, the Periyar Irrigation scheme, the Cauvery Dispute etc., arose from time to time.

In the Sutlej dispute (1869) Bhawalpur whose very existence depended on the waters of the Sutlej opposed the proposal for the construction of the lower Bari Doab canal by the Government of India. After complete investigation it was found that Bhawalpur

will be seriously affected by the scheme and the Government of India dropped the new scheme. In the Sukkur Barrage scheme, as Bhawalpur was an upper reparian State it was allowed to claim that the irrigation proposal of Sindh should also take into consideration the future needs of Bhawalpur.

The Cauvery dispute case between Mysore and the Madras Governments was yet another instance where by arbitration, a happy settlement was reached. The Mysore Government as early as in 1892 agreed not to construct any further storage works on the Cauvery without getting the prior consent of the Government of Madras which had to safeguard the existing irrigation in the Delta. Later in 1910 Mysore sought the permission of Madras for constructing a Dam at Kannambadi. Madras refused. Arbitration was resorted to but one of the parties did not accept the award. The Government of India intervened on appeal, and decided that water allocation should be on the basis that both parties were free to irrigate a specific area without the consent of the other party. This looked equitable though not decided on purely legal grounds. In all such cases it is best to decide in some such practical and equitable way which will reduce the hardship to either side to the minimum.

In the Kashmir dispute, Punjab argued that its chief water sources originate in or flow through Jammu and Kashmir and claimed the right to innovate new irrigation projects for Punjab. But Kashmir objected on the ground that though at present it did not use the waters any scheme of Punjab should not result in any present or future handicap to the development of Kashmir State by user of these waters.

The Government of India always claimed a paramount power as trustees of the waterways of the whole of India by which it sought to allocate water even to non-riparian states if the interests of the latter required it provided it did not affect the material interests of the riparian states. On this principle alone non-riparian states like Patiala, Nabha and Jind got the benefit of the Sirhind canal. Bikanir also got the benefit of the Sirhind canal. Bikanir also got the benefit of the Sutlej scheme despite protests of Bahawalpur. The principle invariably should be the greatest good of the greatest number subject to the criterion that prior rights of riparian owners should not be materially affected.

The Periyar Dispute arose between Travancore and Madras. It is the only Inter-Statal river in Travancore as it touches Cochin in many places and also the Madras territory of Cochin as its mouth. As Madras wanted to irrigate its territories with Periyar water it contrived to force an agreement on Travancore by which the later surrendered an area of 134 sq. miles for the creation or Dam on a nominal rental of Rs. 5/- per acre. This was a good deal for the Madras Government—well infact a bold bid at high handed economic justice. The deal was designated as for purposes of irrigation in the covenant of agreement between the two States but later the Madras Government sought to start a big hydro-electric scheme with the aid of the Periyar Water. Travancore objected. Two arbitrators (Sir David Devadoss and Diwan Bahadur Subrahmanya Ayyar, appointed to settle the dispute gave a varying award. The contention of Madras as espoused by Sir Alladi Krishnaswami Ayyar was that the covenant included the right to use the water power for any purpose inclusive of Hydro-Electric schemes. Travancore ably argued through Sir C. P. Ramaswami Ayyar to the contra. Ultimately the matter was referred to an umpire appointed by the Government of India Sir Nallini Ranjan Chatterjee, retired judge of the Calcutta High Court. The latter gave his findings on 12—5—1941 that upon the construction of the written covenant the lessee (Madras) has the right to use the water for irrigation purposes only and not for any other purpose and that hydro-electric energy if generated can be utilized for irrigation purpose only and not to any other purpose. This case only shows how States could settle disputes by arbitration.

The above ancient history of water disputes is detailed only to show how the provision in the Constitution Art. 262 is ever so necessary in the matter of deciding Inter-State Water dispute. The Kistna-Pennar project now under discussion raised the issue whether the Andhra districts of the Madras Province have any legal right to object to the uses of the waters of the Kistna for Madras city or portions of Tamil Nad. The question invariably is if there will be material disadvantage to the interests of Andhra districts by such diversion of waters. The Union Government's right to intervene in such matters to the best advantage of all parties and States cannot be questioned now under Art. 262. The Union Government can even shut out the jurisdiction of the supreme and other courts in such matters and entrust the matter to a tribunal under Art. 262 or to an administrative fact finding body under Art. 263. Thus the ultimate decision in such water disputes is with the Federal Union and the method of resolving the disputes is in the manner set out under Art. 262 & 263.

6. *Inter-State Financial Relationship*

Inter-State finance in India has had a long historic background. Only during the early period of the British rule when there were the three residencies of Madras, Bombay and Calcutta each unit had an independent system of finance. With the growth of the area coming under the British Crown from 1773 onwards the need for a Central Government was felt. Even the legislative authority of each Presidency was lost and from 1833 Calcutta was the capital of the Imperial authority and withal the only seat of Legislative authority. The budget of the entire country emanated from the Imperial capital. All revenues had to flow to the Imperial Exchequer first and even the smallest bit of provincial exchequer required the central sanction. This was cumbersome and in 1870 an attempt at decentralization was made by Lord Mayo's financial resolution. Lord Ripon's financial resolution in 1880 and Lord Curzon's settlement of 1904 improved the scheme a little more. The provinces got allocated certain sources of revenue and also certain heads of expenditure which they were to balance. When the balancing was difficult with the increasing needs of a growing province in fields such as education, health, roads, etc., additional assignment of funds from the centre was made on the basis of quinquinnial contracts.

After the world War in 1919 the New Reforms gave a measure of autonomy to the Provinces heralding partial responsible Government or Diarchy. Some division of powers of administration and division of sources of revenue was made between the centre and the provinces. But in practice it was found neither of them was financially self-sufficient. So we had the so-called 'Meston Award' which introduced a system of provincial contribution to the Government of India, which worked out to nearly 958 lakhs annually. The Government of India had also to see that it became self-sufficient to do away with this provincial contribution. The latter came to an end in 1928-29. Things were not satisfactory for the next few years. This dependency on provincial contributions was hazardous for the centres' existance. It also lacked in dignity for the centre. A scheme had to be envisaged whereby the finances of the centre would be strong and the Provinces are made subordinate (though self-reliant) to the centre in the financial set up of things. Ultimately the Government of India Act 1935 ushered in a new scheme of a Federal Government and a federal scheme of finance. Under this scheme the sources of federal

Revenue were to be customs, excise duties (except on Intoxicant) corporation tax, income-tax, sale-tax, stamp duties of certain kinds, succession duties etc. The provincial sources of Revenue consisted of land Revenue, excise Taxes on agricultural Income, succession duties in respect of agricultural land, capitation taxes, taxes on luxuries and entertainments etc. The provinces however found that the scheme did not make them self-sufficient. The deficits became chronic which ultimately was enquired into by a committee presided over by Sir Otto Neimyer. The Neimyer award came to the rescue of the Provinces by yielding annual central subsidies to the provinces on a certain proportion according to their contribution to the centre and also in accordance with their general needs. Thus Bengal got an annual grant of Rs. 75/- lakhs, Bihar 25; C. P. 15; Assam 45; N.W.P. 110; Orissa 50; Sind 105; U.P. 25. For further meeting the expenses of development projects, the act provided for the payment of the proceeds of certain taxes collected by the centre such as succession duties, federal stamp duties, terminal taxes and salt, excise and jute duties. Income-tax collected from the provincial sources only was also to be distributed between the centre and the provinces upto a prescribed maximum fraction based on a sliding scale. Indian states which accede to the Federation were provided with special financial provisions but this part of the scheme never came into operation as no state then acceded.

The provisions in the New Constitution in the matter of finance was an improvement on the Government of India Act of 1925. Under the latter the distribution of the Revenues order of 1936 based on the report of Sir Otto Neimyer was the basis of the distribution of revenues. Under it the taxing jurisdiction of the centre and the province was to be separate. The province was to retain all its taxes while the centre was to give whole or in part of some of its levies to the units. The centre was also to give to the units the net proceeds of the taxes under Federal Estate and succession duties, stamp duties, terminal taxes, and taxes on railways and freights. The centre was obliged also to share with the States Income-tax, Jute and Port duties. By federal legislation the centre could also share with the units income from central excise, salt and export duty. But the centre had also the power to levy a surcharge on each tax which it can appropriate. The above scheme of distribution was not applicable to the chief commissioners Provinces where the entire tax collected by the Union Government go to the Union only as they were all centrally

administered areas. The centre could also make specific or general grants to aid the development schemes of the units.

Under the constitution of India the same plan of separation of resources of the Union and States is kept up by dividing the taxing powers between Lists 1 and 2 of the 7th schedule subject to similar assignment (as under the Government of India Act) by the union to Part A or B States The list of taxes wholly or in part were assigned to part A and B States on a plan similar to the 1935 Act with these additional sources such as excise duties in Toilet and medicinal preparations, taxes on transactions in stock exchange other than stamp duties, taxes on sale of and advertisement in the newspaper. The sharing of net proceeds of some taxes also followed the scheme of the 1935 Act with the addition of the inclusion therein of Non-agricultural Income-tax provided in the Constitution. Union excise duties, toilet and medicine could be included by Union legislation while salt, export duty other than on jute were excluded by the Constitution from the scheme of sharing. Art. 271 provides the power of levy of surcharge for exclusively Union purposes. Part C and D states do not get the benefit of Union Taxes while under Art 273, 275 the Union has power to make general and specific grants to the States.

I

Revenues of the Union and the scheme distribution under the Constitution

1. By taxes:

(A) Levied and collected by the Union and distributed between Union and States A & B (Art. 270 i.e., union Taxes on income other than agricultural Entry 87, List I.

(B) Levied and collected by the Union but may be distributed between Union and States A & B Union legislation (Art. 272) i.e., Union taxes on excise other than on medical and Toilet preparations Entry 84, List I.

(C) Levied collected and appropriated wholly by the Union (other taxes in List I, Entry 97 and List I i.e.

1. Customs (Entry 83 List I).
2. Corporation Tax (Entry 85 List I).
3. Taxes on capital values of Assets of individuals and companion (Entry 86 List I).

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4. Surcharge or taxes mentioned in Art. 169, 270 (Art. 271).
5. Any tax not specified in Lists II & III—residuary taxation (Entry 97 List I).
6. Taxes mentioned in A B C D on the following list of State Revenue sources in States and territories *other* than States in Parts A & B (Art. 264 (b) & (c).

2. By Commercial operations:
   1. Railways (Entry 22 List I).
   2. Posts and Telegraphs (Entry 31, 39 List I).
   3. Banking (Entry 45, List I).
   4. Manufacture of salt and opium (Entry 57·8 List I).
   5. Other Commercial operations such as lotteries organised by Government of India (Entry 40 List I).

3. By Fees:
   1. In respect of any matter in List I excluding Court Fees (Entry 96 List I).
   2. Fees taken in Supreme Court (Entry 77 List I).

4. By Sovereign Functions and rights.
   1. Currency and coinage (Entry 36 List I).
   2. Revenue from Union property (Entry 32, List I).
   3. Property accruing by escheat, lapse, Bonavacantia (Art 296 (2).

Miscellaneous e.g., contributions by States on account of privy purse.

II

Sources of Revenue of States

A. Levied by the Union but collected and appropriated by States (Art. 268).
   1. Stamp duties on Bills of Exchange and other documents per Entry 91 List I (Art. 268).
   2. Excise duties on toilet and medicinal preparations per Entry 84 List I (Art. 269).

B. Levied and collected by Union but assigned wholly to States A & B within which it is levied (Art. 269).
   1. Succession and Estate duty on other than agricultural land (Art. 269).
   2. Terminal Taxes or goods carried by railway sea or air (Art. 269).
   3. Taxes on railway fares and freights (Art. 269).
   4. Taxes or transactions in stock Exchange (Art. 269).
   5. Taxes on sale of and advertisements in Newspapers. (Art. 269).

C. Levied by Union but distributed between the Union and States A & B (Art. 270).

   Taxes on income other than agriculture (excluding corporation Tax).

D. Levied by Union but may be assigned by Parliament by law in Parts to States A & B, retaining the rest for the Union (Art. 272).

   Union duties of excise other than on medicinal and toilet preparations (Art. 272).

E. Directly raised and appropriated by States (other taxes in List II).
   (i) Land Revenue (entry 45 List II).
   (ii) Taxes on agricultural income (entry 46 List II)
   (iii) Succession and Estate duty on agricultural land (entry 47-8 List II).
   (iv) Taxes on lands and buildings (entry 49 List II).
   (v) Taxes on mineral rights (entry 50 List II)
   (vi) Octroi (entry 52 List II).
   (vii) Taxes on sale of goods other than newspapers (entry 54 List II).
   (viii) do. on advertisements other than those published in newspapers (entry 55 List II).
   (ix) do. consumption or sale of electricity (entry 55 List II).
   (x) do. goods and passengers carried by road or inland waterways (entry 57 List II).

(xi) do. animals and boats (entry 58 List II).

(xii) do. vehicles (entry 52 List II).

(xiii) Tolls (entry 59 List II).

(xiv) Tax on professions, trades, etc., (entry 60 List II).

(xv) Capitation taxes (entry 61 List II).

(xvi) Tax on luxuries, entertainments, etc., (entry 62 List II).

(xvii) Duties on excise on alcoholic liquors excluded from list (entry 51 List II).

(xviii) Non-judicial stamps other than those inculded in head A (i) above (entry 44 List II).

Surcharges which the Union Government may put on any of the taxes and duties mentioned in B, C, D above, go wholly to the Union.

III

Concurrent Sources of Revenue

These are: (1) Stamp duties other than those collected by means of judicial stamps but excluding rates on stamp duty.

(2) Fees in respect of any of the matters in the concurrent list No. III).

The division of the resources of revenue given above only indicates the legal competency of the Union or State concerned to levy of the tax falling within its sphere. It does not necessarily mean that the entire revenue collected under one head goes to the party who collects—particularly under List I. So far as the tax collected under the State or concurrent list generally the entire proceeds go to the State (or local bodies in the State) but in the case of Union Revenue part of it is assigned to or is shared with the States. As already adverted to there is no clear cut division in this regard but there is enormous dove-tailing to suit the needs of the growing expenditure of the States and the centre. The basis of Neimyer Award under the Govt. of India Act 1935 was retained as practical for the time being. The important tax is the Income-tax whose allocation gave much food for thought. As a direct tax it can be said to go to the States but that would jeopardise the financial supremacy of the Union taking it back to the period of the Meston Award when the States contributed to the centre instead of vice versa as at present. So income-tax had to go to the central exchequer. There was one school which

stated that the share of each State from the income-tax collections should be on the basis of income-tax collections within the State. But this may favour States like Bombay at the expense of poor States as in the former industry and business was prosperous. The other school was that it was the consumer State who should get the benefit. This would involve distribution on population basis which would be unfair to poorly inhabited States as Assam and Madhya Pradesh. Those States had large acres but no thick population. Pt. Kunzru's theory was that the concept of social welfare implied that there should be transfer of wealth from the rich to the poor and so also the rich States must part with a portion of what they were entitled to for the benefit of the poorer States. As many of these States had increasing burdens in the shape of its growing activities — in the field of education, public health, development schemes, etc., the centre had necessarily to help the Union. There was yet again the nationalist urge of prohibition which again meant reduction of provincial finances. The Union under the present set up has large and expanding resources of revenues such as customs excise and income-tax and so it has been provided as detailed above that the States should get aid from the central finance. It must be also clearly understood that in respect of income other than agricultural income levied and collected by the Union only the net produce after deducting the cost of collection is distributed. Even here only the net proceeds minus the proceeds attributable to Part C States and the amounts payable in respect of Union emolument such as salaries and pension — only this balance is available for distribution to the States. (Art. 270 (2) provides that the President may prescribe the manner and form of such distribution. To begin with the percentage is to be announced by an order of the President himself, but he should finally fix the ratio after the finance commission he has to appoint under Art. 280 makes its considered recommendations (Art. 270 (4). Pending the appointment of such a commission the president of the republic nevertheless took expert advice from two committees led by Sir N. R. Sircar and Mr. B. P. Adarkar who heard the case of the States and the Government of India in full. But it all finally led to an award being made by Shri C. D. Deshmuk, the former Governor of Reserve Bank of India and latterly the Finance Minister. The Sarkar Committee recommended distribution on the basis of collection which was not suitable to the Government of India. The Adarkar Committee on the other hand recommended three criteria to be observed; population, area and collection. This also was not quite clear. So a temporary award was sought from Shri C. D. Deshmukh who based his decision on the award of Sir Otto Neimyer making the necessary adjustments brought about by the partition of Punjab, Bengal and Assam consequent on the ushering in of the Dominion of Pakistan. This solution is necessarily temporary and may be it causes some hardship consequent on the reallocation; but this will be reconsidered after the Finance Commission which had been appointed by the President finishes its deliberations and makes the final recommendations. The Commission which is presided over by Mr. K. C. Neogi has been sitting in session since November 1951 and is likely to soon complete its report (by the end of 1952) on the distribution of net proceeds of income-tax between the Union and States and also on other important financial matters.

We may now recall that under the Government of India Act 1935 the share of tax distributable among the provinces was 50%. But now after the Deshmukh award it is 60% of the divisible pool. As Bengal and Punjab had been partitioned so Mr. Deshmukh took the shares of these parts that had gone into the Pakistan areas as 'lapsed percentages' (4% for Bengal and 10% for Punjab) and re-allocated them to the existing States. Assam being small though it was pertitioned, its percentage was not affected. The lost quotas of Sindh (2%) and N.W.F. (1%) which had been included in Pakistan was added to the list available for distribution. The final Deshmukh award was thus arrived:

States	Basic quota under Neimyer award.		Additional share out of lapsed percentages.	Total share now as per Deshmukh.
Madras ..	15		2·5	17-5
Bombay ..	20		1	21
Bengal ..	12·5	(20 Minus 7·5)	1	13·5
U. Provinces ..	15		3	18
Punjab	4	(8 Minus 4)	1·5	5·5
Behar ..	10		2·5	12·5
Madhya Pradesh ..	5		1	6
Assam ..	2		1	3
Orissa ..	2		1	3

This arrangement took effect from 1-4-50 by a presidential order and is to remain in force for 2 years until the finance commission settles the matter. The Award did not take into account the former Indian States which had merged into the old provinces. These were left to the separate consideration of the Government of India. The President's order referred to was under Art. 270 (4b) under title "the constitution distribution of revenues order 1950", which only incorporated the Deshmukh Award as detailed above. There was another Constitution (Distribution of Revenues) order 1951 dated 31-3-51 which extended the above ratio of distribution till 31-3-52.

The distribution of the proceeds of certain excise duties other than those on medicinal and toilet preparations may be distributed wholly or in part to the States from among whom they are levied. The principle and method of such distribution is left to be presented by law of Parliament under Art. 272. This is sometimes of vital importance to finances of certain States such as Assam where duties on tea, petroleum and kerosene are levied and collected in plenty. Assam contended that even if they get 50% of these collections they will get 4 crores per year solving all their financial problems.

With reference to the plight of States in the matter of finance a forcible plea was put by The Hon'ble Mr. C. Rajagopalachari, Premier of Madras. As an elder statesman of India who has held the most exalted offices in our country his words have to be listened to with respect by the Finance Commission who are touring the country now. Mr. C. Rajagopalachari during the recent budget debate in the Madras Legislative Council said "The centre has taken income-tax to itself along with other rich resources like customs and excise revenues.........They, (the Central Government) have left the miserable section of the population to be taxed by the State. The Milch Cow is the centre's and all the famished livestocks are ours......The Centre has left the sales tax to us. We have made something out of it. When we have this one vitally important sales tax as the milch cow, the Centre's greedy eyes are on it."........The Premier was further of the view that if the divisible pool of income-tax is on the basis of population, Madras will get 20·5 per cent instead of the 17·5 per cent of the divisible pool. Then again out of the excise revenue which is nearly 90 crores half might be put into the pool so as to augment the total for division between the various States. The Madras Governments memorandum to the Finance Commission followed the above lines. May be other States as Bombay oppose the division on population basis. But it appears reasonable that the State's finances should be improved. A sure remedy lies in making the excise revenue also being put into the hotchpot of the divisible pool. The Finance Committee which has to submit its final report to the President of the Indian Republic by the end of this year 1952 will doubtless take all these factors into consideration. They have to give their findings on:

(i) the distribution of the net proceeds of the income-tax first between the Union and the States and secondly between the States inter se shares under Articles 270 and 280 (3) A of the Constitution;

(ii) the principles which should govern the grants-in-aid of the Revenues of the States out of the consolidated fund of India under Art. 280(3)-B read with Art. 275 of the Constitution;

(iii) the amount that might be granted to the States of West Bengal, Assam, Orissa and Bihar under Art. 273 of the Constitution is in lieu of the share of the jute export duty.

It may be added that in federal countries as U.S.A. there is no question of sharing revenues between the Federal Government and the Units. Grants are, however, given by the Centre for development schemes to be worked in the State under the Centre's supervision. But then the States in U.S.A. were autonomous even before the birth of the American Republic and so had developed a more satisfactory financial structure. Even there they look to the Centre's aid by way of grants. In India the States have yet to evolve a permanent structure and their financial independence will naturally have to be slowly evolved paripasu. The problems of States like Madras where total prohibition is in vogue, is indeed worse as a big slice of 17 crores is lost by excise. Though total prohibition is one of the directive principles in our Constitution, it is highly controversial whether its introduction too early is a matter of benefit to the State and the people at large. Economic and educational advances alround among the masses must precede total prohibition for complete success. Precipitation of the scheme seems to have worsened even the moral aspects of the people who due to poverty appear to have taken illicit manufacture as almost a cottage industry. The matter therefore requires thorough examination by our leaders on the administrative and political fields.

Grants from the Union to the States

The four-fold purposes of these grants from the Union to the States consisted of (i) to compensate the loss of shares of some items of revenue which they once had; (ii) to compensate for the additional expenditure imposed on certain States on account of new obligations arising under the new Constitution; (iii) to induce them to undertake schemes for welfare of scheduled Tribes and for raising the level of administration; (iv) so as to help the poorer and necessitous States by grants-in-aid as otherwise, they cannot come on a par with States which are more fortunate. The first two kinds are statutorily compulsory in the Union Government while the last two are in the discretionary powers of the Union.

Jute Grants

Export duty on Jute is of the category fixed by Art. 273 while grants to Assam is of the 2nd category (Art. 275). These are made a charge on the consolidated Funds of India. The principal Jute areas are Assam, Bihar, Orissa and West Bengal, under the Government of India Act 1935. They had not less than 50% of the net proceeds. After 17-3-48 with the bulk of the jute areas falling in Pakistan there was a consequent reduction to 20%. Under the New Constitution this principle of percentage was given up as it may lead to other States making similar claims regarding export duties on commodities grown in them. Shri Deshmukh's Award gave them a grant by way of compensation and this was included in the Constitution 'distribution of revenues of order of 1950'. The grants were:

West Bengal 105 lakhs per year; Assam — 40 lakhs per year; Bihar — 35 lakhs per year; Orissa — 5 lakhs per year.

These grants are open for 10 years from the commencement of the Constitution or till duty on jute is levied by the Union whichever is shorter (Art. 273).

Grant to Assam Tribal Area

These grants under Art. 275 (i) proviso and 275 (2) are for better administration and promotion of tribal areas entrusted to that State. In respect of Assam the charge on the consolidated Fund of India was for sums equivalent to the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part A of the table appended to para 20 of the State schedule and the cost of such schemes of development for raising the level of administration to that of the rest of the area of that State. This arrangement is tentative till the recommendations of the Finance Commission is received and acted upon by the President.

Grants for Welfare and Development Schemes

These are of the third category. Art 275 (1) provides such grants to meet the costs of development schemes, executed with the approval of the Government of India — once they are approved from discretionary they become obligatory on the Union. Assam grants are for merely development schemes of scheduled areas but these grants include welfare schemes for Tribal people. The President can fix the grant pending parliamentary legislation.

General Assistance Grants

These are of the 4th category vide Art. 275 (1). No specified purpose is stipulated. Pending legislation the President's order holds good. Art. 282 provides that the Union or a State may make any grant for any public purpose though for that purpose it can make no legislation. This will enable to make grants in aid of institutions and universities specified in Entries 63-64 List I America has such a provision, vide U.S. v. Butler. But in Australia the spending power is coterminous with legislative power.

Grants in other Countries

The grants-in-aid by the Central Government is a normal feature of all civilised Governments. In England the Central Government aids local governments under the Local Govt. Act 1929 by special grants to police, education, roads, housing, unemployment, rural water-supply, etc. This method of aid gives a strong hold to the centre over local authorities. Where money is given, inspection, supervision, etc., follows. In U.S.A. also the Federal Centre aids the States for agriculture, vocational education, child and maternity welfare, unemployment relief, etc., which though within State jurisdiction assume some national importance for the interfering aid of the centre. Australia also gives such assistance under Sec. 96 of its constitution. The Federal Aid Roads Act 1924, the Flour Tax Act 1938, the Commonwealth Aid Roads and Works Act 1947, etc., are instances of Federal aid in Australia.

7. *Increased Activities at the Centre in the Field of Finance*

It may be said that the economic functions of the State in India have developed enormously after the acquisitoin of Independence What was during the British rule merely a control of revenue and expenditure at Centre has since 1947 developed into an increased activity in diverse directions — the various development projects such as river valley projects, land reclamation schemes, fertilizer factory at Sindhri, a locomotive factory at Chitaranjan and an air-craft factory at Bangalore. It is worthwhile to quote from "Since Independence 15-8-1947 to 15-8-51", a Government of India publication. The matter is entirely factual and reliable. There are altogether 133 river valley projects under execution by the Federal Union of India. Of these eleven are multi-purpose, sixty irrigation and sixty-four purely power projects. These river valley projects are estimated to cost Rs. 5,900 million. The multi-purpose projects take their name as they confer various community benefits such as development of internal navigation, facilities for soil conservation, afforestation, fish culture, drinking water facilities, recreation centres, sehemes for control of floods, preservation of cattle, irrigational facilities to increase food production, etc. The major projects of these are Bhakra Nangal project in the Punjab, the Hirakud project in Orissa, the Damoder Valley project modelled on the famous Tennessee Valley scheme in U.S.A., the Tungabadra project which will serve Madras and Hyderabad, the Machkund Hydro-Electric Scheme which will be jointly administered by Madras and Orissa, the Kakrapara project in Bombay, the Sarada power project in Uttar Pradesh, the Mayurakshi irrigation cum power project in West Bengal, The Chambal irrigation cum power project in Madhya Pradesh and Rajasthan and the Lakkavali irrigation cum power project in Mysore and the power projects in Madhya Pradesh. There are about 123 smaller power and irrigation projects under execution in 19 States. These projects tend to increase food production, give more irrigational facilities, rapid electrification of rural areas and power stations which encourages starting of various industries. All this means money flow from the centre in its grants scheme and this can be done only if all the finances are properly pooled at the centre and variously distributed to the needy States for development and other purposes. This also tends to give a co-ordination of policy all over the country in the matter of development schemes. The supervision and control from the Centre is another good factor which ensures efficiency and reliability — all tending to make

India as one Nation growing into full maturity of civilised opulence. This aspect is certainly worthwhile to yield financial supremacy to the Centre instead of diffusing the same in autonomous States which may disintegrate at any time into petty inefficient and poor provincialism not mindful of the larger interests of the nation as a whole.

Thus the subject of finance is certainly a matter of careful study and implementation at the centre. The other responsibilities of the Finance Ministry is that it should maintain a clear cut Fiscal Policy to suit her national interests and this is sought to be carried out by the Reserve Bank of India. The latter institution works in close co-operation with the Central Fiscal Ministry. The Ministry has further to maintain laison with international bodies like the World Bank and the International Monetary Fund. In the international field in partnership with certain other commonwealth countries, India is working out a plan of development for all underdeveloped countries of South East Asia.

In 1949 the Finance Ministry was reconstituted to face all the above new problems. The development of the department is going on even now. The National Income unit and the National sample survey branch of the Finance Ministry are collecting data so as to put India's development plans on a more rational and sure basis than at present. The planning commission established in 1950 has submitted its report. The five-year plan envisaged by the Commission involves an investment of about Rs. 1,793 crores. The first part involves an expenditure of Rs. 1,493 crore and is meant to restore the pre-war condition of supply in consumer goods by 1955-56; the 2nd part will cost about Rs. 300 crores and will provide a slightly higher rate of development during the next five years. The commission has drawn up a list of priorities in the first part of the plan such as Rehabilitation of displaced persons, increasing of production of food and raw materials, development of material and technical resources to increase employment in the country, consolidated progress in the sphere of social services, adequate administrative and social services to ensure a rapid rate of development of the less developed States. Some of these even come under the development scheme of the Colombo plan on which our Five Year plan is merely an advance to ensure small development unmindful of foreign aid. Development of Industries invariably of national utility also come within the special perview of the planning commission. Manufacture of arms, ammunition, production and control of atomic power energy,

railway transport are the monopoly of the Central Government. New enterprises in industries like coal, iron, steel, ship-building, telephone, telegraphic and wireless, mineral oils can be undertaken by the State alone on a national scale. Only rest of the field is open to private enterprise. In furtherence of development of National welfare, India has also concluded three master agreements with *Unesco*, F. A. O. and I. L. O. *and an agreement with* the U.S.A. under the Truman Four Programme. Under all these India expects to receive, free foreign technical assistance for use in her development projects. Under the Colombo plan Canada and Australia respectively subscribe £25 million and 31·5 million to India's development Fund. The counter-part funds of the U.S. food loan to India will also be used for financing our Developing projects. External Financial assistance is necessary now to India. The Internal 'Shy Capital' in India has yet to be pooled for national benefit. Citizens of India having capital have yet to demonstrate a quicker response to national needs. Often their money lies waste due to lack of vision and venture. So the Government of India has for the time being allowed foreign investors which will under our Constitution, not suffer from any discriminatory treatment. All this only further tend to show that for the nation to advance, the financial stability of the centre must be made invulnerable. The protagonists of State power to the detriment of the strength of the centre must realize that their's is a short-sighted policy that will only retard national progress and probably disrupt the entire republic of India into petty quarelling pigmy-like undeveloped States with little or no international recognition. Federation is the only solution and the strength of the Indian Federation must be kept up at all costs. The theory of looking up to centre for help as demeaning to the states is absurd. The converse will make the situation worse for India's credit in the Inter-national sphere. The centre must be made capable of executing big projects of national utility. It must be in the position of a well-to-do and helpful father to the Unit, always out to help them. The loss of prestige or efficiency of the centre will result only in the annihilation of the little prestige and utility of the unitary States as well. To be subordinate to the centre is a very meagre price for the unitary States for the untold benefits they derive therefrom.

It is to assess and pool the financial resources of the country and to recommend proper distribution of the same that under Art. 280 the President is empowered to appoint a Finance Commission to review from time to time the financial relationship between the Union and the States to make recommendations as to :—

(a) the distribution between the Union and the States of the net proceeds of Taxes which are to be and may be divided between them under Ch. I part III of the Constitution, and the allocation between the States of the respective shares of such proceeds ;

(b) the principle which should govern the grants in aid of the revenues of the States out of the consolidated fund of India ;

(c) the continuance or modification of the terms of any agreement entered into by the Government of India with the Government of any State specified in Part B of the first schedule under Cl. (i) of Art. 278 or under Art. 306.

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

As already adverted to the Finance Commission was appointed under the Finance Commission Act of Parliament 1951. The commission has been sitting since 16-10-51 and is expected to finish its labours by November 1952.

8. *Consolidated Fund and Contingent Fund*

The Government of India had never in vogue any consolidated Fund of India. For the first time in the history of India under Art 266 such a Fund is created so that it can provide the foundation stone of the system of Parliamentary supervision and control just as in England. The House of Commons in England exercises its powers thus by laying down :

(1) that no tax is payable by any one except by authority of a Statute of Parliament ;

(2) that the whole of Public Revenue be paid into the consolidated Fund at the Bank of England and that no penny should be expended except under authority of an Act of Parliament i.e., The Commons.

(3) that there be effective control and audit of the moneys so granted are spent according to the intentions of Parliament. This is a wholesome check on national revenues. In Australia too Sec. 81 envisages such a consolidated Fund to be operated according to the provisions of the Constitution. Sec. 83 states that no money shall be drawn from the Treasury of the commonwealth except under appropriation by law.

But under the Govt. of India Act Sec. 136 ' all taxes and other revenues' were merely covered by the term 'Revenues of the Federation'. Their distribution to the several States was also provided in the Sec. The conception of the consolidated Fund was introduced in the New Constitution to safeguard all receipts and expenditure of National Revenues. This National reservoir has to be operated within the ambit set out in Art. 266. No money could be spent out of this Fund except in accordance with a valid law made by the legislature (266 Cl. (3). Clause (I) of Art. 266 specifies a 'Consolidated Fund of India' and a 'Consolidated Fund of the State'. Unlike the old terminology of the Government of India Act 1935 where 'Revenues of the Federation' included even the tax levied by the Union but assigned to the State under the new constitution, taxes which are assigned to the States in part A and B (Art. 268 (2); 269 (2) 270 (2) do not form part of the consolidated Fund of India. Art. 283 provides that the custody of the consolidated Fund, the contingency fund and the public money shall be regulated by law of Parliament, of the Union or the State as the case may be.

Into 'Public Accounts' all other monies which do not come into the consolidated fund, should be paid (Art. 266 Cl. 2). These include revenues and moneys received in repayment of loans which will go to the consolidated Fund while moneys raised by loans will come into public Account (see also Art. 294). No legislative authority is required for drawing monies from Public accounts. There is also a consolidated Fund for Part C States (vide Sec. 39 of the Government of Part C States Act 49 of 1851.

Contingency Fund

Art. 267 provides the creation by Parliament of a contingency Fund for the Union and a similar one for the State. The amount of the Fund is to be determined by the legislature of the Union and the State respectively. This Fund is to enable the executive to make advances for the purpose of meeting unforeseen expenditure pending authorisation of the same by the Legislature as supplementary, additional exceptional grant etc. (Art. 115-6; 205-6). By the contingency Fund of India Act 49 of 1950 a fund of 15 crores of rupees has been created for the centre. From such a fund the executive can carry on their work re : (i) established services where the grant has not been formally voted (ii) departments for which Parliament had made no provision in the year's estimates (iii) Departments which have exhausted the sums appropriated under votes. The monies spent thus are later voted by parliament and then repaid into the Fund either before or after the close of the financial year.

9. *Financial aspect of Part B States*

The original Indian States such as Mysore, Travancore, Hyderabad etc. which are now called Part B States had always maintained independent political and financial status. So all the sources of Revenue mentioned in Lists I, II & III belonged to them. Thus customs duties postal and railway earnings, currency and Mints, inland transit duty etc. all belonged to the State. Under the Gavernment of India scheme, the States were asked to give up in favour of Federal Government, some of the Federal sources of revenue while they were allowed to retain the others. Thus the Union could not levy income tax or property tax within the States. After Independence and accession of the States to the Indian Union as Part B States the financial set up of Part B States required examination. It had to harmonise with the National solidarity of the Union and possess a certain amount of uniformity with Part A States in their financial relation with the Union. This needed some time to wipe out the old legacies. So a scheme was envisaged under Art. 278 by which B States were allowed to retain their financial distinctiveness but the ideal of their ultimate assimilation to the pattern of Part A state was kept in view. Art 278 empowered the Government of India to enter into an agreement with a Part B State with regard to:

(1) the levy and collection of any tax or duty leviable by the Government of India in such state and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this chapter;

(2) the grant of any financial assistance by the Government of India to such state in consequence of the loss of any revenue which that state used to derive from any tax or duty leviable under this constitution by the Government of India or from any other source.

(3) the contribution by such State in respect of any payment made by the Government of India under Art. 291 Cl. (i) (Privy purse sums of Rulers); and when an agreement is to be entered

into, the provisions of this chapter shall in relation to such state have effect subject to the terms of agreement.

Such an agreement shall continue in force for a period not exceeding 10 years from the commencement of the Constitution. But the President may after 5 years modify the agreement if he deems it so necessary after considering the report of the finance Commission.

Thus it will be seen the financial relationship is one of agreement between the Union and States. Prior to independence and prior to the Government of India Act the financial relationship was founded on treaties and engagements. The various states used to pay various tributes and contributions to the crown under treaties and agreements. These Augmented the central revenue and the only obligation of the crown then was Defence and Foreign relations. The Davidson Indian States Enquiry Committee (financial) of 1932 analised these contributions as coming under (1) acknowledgment of suzerainty; (2) commutations of an obligation to provide military assistance to the crown (3) for maintenance by the crown of a special force in connection with a State, local military force etc. But the States had a free hand in their internal administration and financial set up. This led to varied policy re: customs, income tax, posts, telegraphs as between Indian provinces and the States. The Tariff policy also suffered in the differential treatment offered in British India and the native states. This was a source of weakness to both the States and the rest of India. Some States (less than 10) had the right to Mint their currency and coinage. The Government of India Act 1935 brought about a federal scheme whereby the States could accede to the Federation by giving up through their Instruments of accession their right to control over the sources of revenue in the federal list e.g. customs, posts and telegraphs, Incometax etc. It also provided that the crown might agree to remit over a period not exceeding 20 years the cash contributions payable by the State in excess of the value of the Immunities and privilege enjoyed by the State. (vide Sec. 146).

But this federal scheme under the Government of India Act 1935 did not come about as none of the States acceded. The Indian Independence Act of 1947 by Sec. 71 (b) erased the special relationship between crown and the Indian States. So the Tributes and contributions ceased automatically just as 'paramountcy' lapsed. The Dominion of India inherited only the right to main-

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tain the existing arrangements with the Indian States in matters of common interest such as customs, posts, telegraph etc., by agreement. This agreement continued till the States accepted the constitution of India by Proclamation. After the integration of the States into the Federal Union, Art. 278 governs the financial relationship. The Constitution has incorporated substantially the recommendations of the Indian States Finance Enquiry Committee of 1948 under the chairmanship of Sri V. T. Krishnamachari set up for effecting financial integration of the Indian States with the rest of India. Now the Union has generally the same powers in respect of Lists I & III with States in Part A & Part B, as the revenues and all expenditure on 'Federal Services' of the States from federal sources together with all assets and liabilities are to be transferred to the Union (vide Art. 295, 246, Part XII in general). It is also clear that Part B States enjoy no special privileges or immunities except that are specifically set out in the Constitution. The Union will observe the same rule between A & B States in respect of distribution of Revenues, grants etc. The period of 10 years in Cl. (2) of Art. 279 is fixed so that there may be no sudden withdrawal of the Federal sources of revenue from Part B States.

There is a strong criticism that the financial burden of the centre should be shared in a greater measure by the Part B States for the immense benefits, they derive from the integration. The financial integration scheme should be worked out gradually to assess the position. Under the scheme from April 1, 1950 it is the Union that collects Income-tax from all state areas. But the rates of Income-tax in Part B States have to be gradually raised in 2 or 3 stages to reach Part A States standard. The divisible pool of the Income-tax follows the same principles as applicable to Part A States. Regarding internal customs all Part B States abolished it from 1-4-50 except in Rajasthan and Madhya Bharat where the abolition will be gradual. Furthermore after the financial integration of States, all the federal services and departments together with the income they produced would be taken up by the Union (e.g. customs, railways, posts and telegraphs except in Travancore—Cochin). Where the revenue sources are mainly federal and the States lose by integration, the Union Government must make this up for the next 5 years by guaranteed payment of the whole amount of it or of the States' share from the divisible pool of federal sources whichever is higher.

By integration Part B States stand to gain. They become equal partners in the Indian Union. The old feudalism of Two Indias disappear. Parity in respect of contributions to the Union by the major states is achieved as also in respect of benefits they derive from the Union. The development programme of Part B States is kept on a par with that of Part A State. The Union gains in the effectiveness of its policies by the exercise of uniform powers and functions throughout India. Further integration improves the economy of the nation. Commerce and Industry get a fillip by a co-ordination of trade and tariff policy, common banking and commercial legislation, and common system of transport and communications. May be the people of B States may have now to face increased union taxation but the ultimate dividend they derive by the benefits they get will in the long justify the reform. Though the V. T. Krishnamachari Committee left out the question of privy purses as a political question, under the constitution the Government of India covenants by an agreement with a ruler before accession, the amount of privy purse. This is reimbursed by the union from the State contributions which is fixed by order of the President subject to any agreement made with the State in question under Art. 278 (vide Art. 291 (2). The privy purse amounts are a charge on the consolidated Fund of India and is free from income-tax (Art. 291 Cl. (i).

10. *Certain exemptions from taxation*

Exemption of the property of the Union from State taxation is provided under Art. 285. The States may continue to tax such union property as was liable to such taxation before the commencement of the constitution or where Parliament permits it by law (Art. 283 Cl. 2).

Similarly property and income of a State shall be exempt from Union taxation under Art. 289. But trade or business carried on by a State, unless incidental to ordinary functions of Government are not exempt from Union taxation.

What is property of the Union entitled to such exemption from State taxation ? Art. 294-298 lay down what such property of the Union is namely, property acquired by succession from the Dominion of India, property acquired by succession from Indian States (Part B States) subject to conditions stipulated under Art. 293 (1) property accruing to the Union by escheat, lapse or bona-vacantia, property underlying the oceans within the territorial waters of India, *purchase or acquisition* (Art 31 Entry 33 List I) of property for the purposes of the Union (Art. 298).

There are certain restrictions as to imposition of tax on the sale or purchase of goods outlined in Art. 286 which prohibits taxation on sales and purchases outside the State or during the course of import into or export out of India. In effect no tax can be levied on Inter-State trade and commerce as it will hamper free trade. Entry 54 List II in respect of 'sale or purchase of goods other than Newspapers' belongs to State list while taxes on imports and exports (Entry 83 List I) and Inter-State commerce and trade (Entry 42 List I are exclusively Union subjects. The explanation to Art. 286 makes it clear that the Taxing jurisdiction of a state is limited to Intra-State transactions. A state can tax a sale or purchase only : (i) if the goods have been actually delivered within the State as a direct result of sale or purchase; (2) if the delivery takes place for the purpose of consumption of the goods within the State. If these two conditions are not there, no sales tax could be levied. By Clause (3) of Art. 286 essential commodities which are very essential for the life of the community throughout India are exempt from sales tax and any such taxation law to be valid must have the prior consent of the President of the Union Parliament can declare by law what these essential commodities are (Entry 3 List III). There is at present a feeling current in trade circles (vide proceedings of Madras Trade Association Annual Meeting on 30-4-52) that the Sales tax may be uniform in all States on any commodity so as to facilitate good trade. This can certainly be viewed from All-India basis for the sake of uniformity and prosperity of the same.

Taxes on purchase and sales of electricity consumed by the Government of India are also exempt except within the limits prescribed by Parliament by law (Art. 287). Under Art. 287 taxation by states of water and electricity stores, generated, consumed, distributed or sold by authorities established or regulating or developing any inter-state river or river valley also require the assent of the President after reservation to make it legal and valid.

11. *Borrowings*

The Government of India can borrow upon the security of the Consolidated Fund within the ambit laid down by Parliamentary legislation (Art. 292). They may give loans to States or guarantee State loans within the limits fixed by Parliament for their own borrowing (Art. 293 R). They can raise loans in or outside India.

The States also can similarly raise loans on the security of their consolidated Funds within the limits laid down by State Laws. They can give guarantees within those limits. But they cannot enter into foreign loans. Where they are already indebted to the Government of India or the latter have stood as guarantee for any loans, and new borrowing by the State should have the prior consent of the Government of India (Art. 293 (i) and (ii).

12. *Finance in Part C and D States*

The scheme of Art. 268 to 270 applies only to Part A and B States and not to Part C and D States. In Part C States the Union stamp duties and excise duties will be taken over by the Union, as also the Duties and taxes mentioned in Art. 269 and all the Income taxes levied within the State. But in Part A and B States it is the latter that take those proceeds. There is no question of distribution as outlined in Art. 272 for Part C States. The Union directly deals with the administration of Part C States and hence the entire financial responsibility is here (vide Government of Part C States Act 49 of 1951).

13. *Local Finance*

The constitution allows taxation on professions trades, callings and employments for the benefit of local bodies (Art. 276). But Art. 277 assures the continuance of all those taxes, duties, cess or fees which any state government or local body was lawfully levying immediately before the commencement of the constitution till parliament provides by law. These may continue so despite the fact they are now included in the Union list. Thus local bodies retain yet the terminal tax, pilgrim taxes through railway fares, the circumstances and property tax levied on the basis of income etc. But for this Saving clause, they would have been lost to the local bodies. But Parliament by law may at any time abrogate this.

14. *Contracts and suits*

Under Art. 299 contracts by the Union or State shall be entered into by the President, Governor Rajapramukh of the State as the executive head. They are not personally liable. Suits and proceedings can be instituted or defended, only in the name of the Government of India or the Government of the State as the case may be. But where no such action could have been laid against prior Governments of India or State no suit could lie. This is made specific by the words 'if this constitution had not been enacted at the end of cl. (1) of Art. 300. This is on the principle that there is in India an immunity to the Government for acts done in the exercise of sovereign functions under the historical immunity of the East India Company for such acts. So if a suit could not lie against East India Company, no suit could lie against the Government of India now under the Constitution.

We are now at the close of a study on Inter-State relations of Part B States, touching their historical growth, their administration and Finance and their relations with the Federal Government of the Union of India under the New Constitution. Let us remember that Part B, C or D State have contributed as much to the traditional culture and prosperity of India as Part A States. Sometimes we in Part A States are inclined to look down on Part B States as inferior. But let it be remembered at times of national emergencies it is the Part B States that have contributed in men and money for the defence of India. There is a certain amount of conservative reservoir of tradition and strength in Part B States which it is well to nurture and foster for the betterment of the commonwealth in this land of Bharat. Reformers could effect the needed reforms in Part B States to improve the lot of the common man but in their zeal let them not destroy the grand fabric of ancient India that have been stupendously developed in an out and out Indian atmosphere in Part B States. Indian India of this Republican Era knows only one India that is Bharat, a union of States comprising part A, B, C and D States each distinctive in its own way.

PART III

INTER-STATE RELATIONSHIP IN TRADE, COMMERCE AND INTERCOURSE

1. *Relevant provisions in the Indian Constitution*

We shall now study inter-state relationship in trade commerce and intercourse.

Article 301. to Art. 307 deal with trade, commerce and intercourse. Art. 301 postulates that trade commerce and intercourse shall be free throughout the territory of India. But under Art. 302 Parliament may by law impose restrictions on these between one state and another or within any part of India as may be required in Public Interest. But such law of Parliament or legislation of a state shall not give or authorise the giving of any preference to one State over another make or authorise the making of any discrimination between one State and another under any of the Heads in the lists of 1st schedule (Art. 302). There is however, a proviso to this that Parliament can make such a preference or discrimination if it is necessary on account of scarcity of goods in any part of India. But notwithstanding Art. 301 or 303 under Art. 304 a state legislature may by law (a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject to however, as not to discriminate between goods so imported and goods so manufactured or produced and (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that state as may be required in public interest. In the case of the latter, the previous sanction of the President is needed for the legislation. Art. 305 saves all existing laws on the subjects except in so far as the President may by order otherwise provide. Thus in respect of the Motor Vehicles Act. 1939 (vide Motilal V Uttar Pradesh AIR 1951 All 257) Rules made under The Defence of India Act and continued under the miscelaneous Act XX of 1947 (vide Government of Mysore V Mahantha (1951) 6 DLR 44 (Mys) come under the term 'existing law'—though they are repugnant to Art. 301.

With reference to Part B States, prior to the Constitution, some of them (viz., the present Hyderabad, Rajasthan, Madhya

Bharat, Sowrashtra and Vindhya Pradesh) used to levy internal customs duties. Under the present constitution by Art. 306 any such tax or duty on import of goods into the States from other States or on the export of goods from the State to other States may be continued by an agreement entered in that behalf by the Government of India and that State for a period of 10 years provided the president may at any time after the expiration of 5 years from such commencement terminate or modify any such agreement after consideration of the report of the Finance commission constituted under Art. 280.

2. *American Inter-State Relation in Commerce.*

We shall now relate how America deals with such problems. In America the Congress is empowered to 'regulate commerce among the several States Art. I Sec. 8 (3). There is no express power in USA guaranteeing inter-State trade and commerce as in India (vide Art. 321). Judicial Interpretation has entrenched the Congress in USA as supreme. In effect it is considered plenary and exclusive (vide Brown V Maryland 1827) 12 Wheat 419). In Marshall V Ogden 9 Wheat 1, it was clearly observed that where the congress is silent on any particular aspect it must be impliedly deemed that the matter is to be free from any regulation or restraint by the States. That was a case where Ogden derived from the States of Livingstone and Foulton an assignment of all their exclusive rights to operate a steam Ferry between New York and Elizabeth Town. Gibbons was operating steam boats on the same run. Ogden got an injunction from Court on the footing that State Regulation was enforcible until it came into conflict with federal law. Gibbons argued in appeal that State laws which purport to give exclusive privilege are repugnant to the constitution which authorises Congress to regulate commerce. Any concurrent power of State to regulate trade (10th amendment) is subordinate to the national interests as envisaged by Congress legislation. Gibbons succeeded. The power to regulate commerce is the power to prosecute the rule by which commerce is to be governed. 'Commerce among the States' these words imply that under the USA Constitution, it is implied that the internal trade of the State is free except where necessary for executing some other power conferred expressly.

The supremacy of the Federal power was again brought out in the case of Missoueri V Holland, 252 US 416 where the Federal Migratory Bird Treaty Act of 1918 was questioned as unconstitutional as it interfered with the sovereign rights to the State by the 10th amendment. The State also claimed pecuniary interest as owner of the wild birds within its borders. Though the residuary powers vested in the state and the centre had only enumerated powers it was held that in the larger interests of the country treaties with other States entered into by the Congress must be respected. Here the treaty intended to protect food production from the menace of migratory birds. It was therefore held that the treaty powers of the Congress override States' power in the national interest. In India there is a specific provision in the constitution (Art. 253) compelling the States' obedience to such international agreements.

Congress exercised more and more powers over Inter-State commerce. In the Lottery case Champion V Ames 188 US 321 (1903), an Act of 1895 which penalised the sending of lottery tickets in inter-State commerce was sustained. So also the Act of 1910 prohibiting inter-State transportation of women for immoral purposes was upheld in Hoke V USA 227 308 (1913). The Federal Motor Vehicles Theft Act of 1919 making it a Federal offence to take a stolen car across a State line was upheld in Brooks V USA 267 US 432 (1929). Thus the Congress used its 'Commerce power' to keep people safe and good. The doctrine established in the Sheverport Case 234 US 342 was to the effect "wherever the inter-state and Intra-State transaction of carriers are so related that the Government of the one involves the control of the other, it is congress and not the State that is entitled to prescribe the final and dominant rule for otherwise, congress would be denied the exercise of its constitutional authority and the state and not the Nation would be supreme within the national field." In the National labour relations Board V James and Laughter Steel Corporation 301 US the National Labour Relations Act was sustained upholding its provision for collective bargaining. The Board opposed the Corporation for violating the act by engaging in unfair practices affecting commerce such as discriminating against members of the Union with regard to hire and tenure of employment and coercing and intimidating its employees. The supreme Court agreed that the Board could exercise its machinery to resolve the unfair practice by negotiation and conference. It also held that the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employer and employee instead of being an invasion of constitutional rights of either was based on the recognition of the right of both and that therefore the order of the Board was within its competency under the Act which also was valid.

In United States V Darbey 312 US 100 was decided that minimum wage legislation could be sustained against the challenge that by limiting 'freedom of contract' it denied 'due process of Law.' Fair labour standards was thus constitutionally feasible under Commerce power and this was exactly done by The Fair Labour standard Act 1938 which was upheld in this Darbey's case on the ground that the power to regulate commerce is not merely a power to promote and foster but is also a power to prohibit. The object is that commerce should not be made the instrument of competition in the distribution of goods produced under the Standard Labour conditions which competition is injurious to the commerce and to the States from and to which the commerce flows. The Act is therefore sustained to meet the constitutional demands of Fair Labour under proper wages and hours of work.

In Freeman V Hewitt 329 US 252 Justice Frankfurter pithily put it 'By a course of adjudication unbroken through the Nations' history the Court applied the principle that the commerce clause was not merely an authorisation to congress to enact laws for the protection and encouragement of commerce among states but by its own force created an area of Trade free from interference by the States. A State is precluded from taking any action which may fairly be deemed to have the effect of impeding the free flow of trade between States."

In US V Dewitt (1824) 9 Wall 41 the Federal Power in respect of Inter-State trade has been held to be exclusive when it is national in character or admits of one uniform system of regulation. In Robbins V Shelly Country Taxing District (1887) 120 US 489 it was opined that the failure of the Congress to make express regulation in such cases was construed as indicating its Will that the subject shall be free from any restriction or omission. In Manongahela Bridge Co. V US (1893) 148 US 312 it was said "The power of the congress to regulate commerce carries with it the power over all means and instrumentalities by which commerce is carried on.' There has thus grown in USA a liberal regulation of Inter-State commerce so as to include regulations of instruments of transport, goods on transit and persons carrying on that commerce.'

The stage when commerce becomes inter-state has been laid down in Gibbons V Ogdon (1824) 9 Wh. 1 thus: — "Commerce

from the point of departure anywhere from within one State down to its destination within another State. Any tax levied by a State till the goods leave the terminus is illegal as it offends free inter-state commerce (Weton V Missouri (1876) 91 US 275. Even a licence law for selling goods by sample is against such free trade (Robbins V Shelby County (1887) 120 US 489). In Brown V Maryland (1827) 12 Wh. 419, the doctrine of original package invoked states that if the package is intact before it is mingled with the general mass of products within a state the latter cannot tax the package. But in Australia this doctrine has not been accepted as inflexible. In McArthur V Queensland (1928) 28 CLR 530 it was held that it was incompetent for a state to impose a tax or require a licence from the first seller after entry into the State on the footing that it is part of inter-state trade even though it is merely a domestic Act.

The term 'Intra State' connotes commerce that begins and ends within a state. Once it crosses the boundaries it becomes 'Inter-State' and attracts federal intervention.

It should be noted that in India the American intricacies of Inter-State and 'Intra State' is avoided by user of the words "Trade and Commerce within State" in entry 26 List II. In Art. 361 the words used are "Trade commerce and intercourse throughout the territory of India shall be free."

In America the term 'Intercourse' is not used in its constitution. The words used are 'Trade and commerce.' Trade implies buying and selling. But "Commerce' is a wider term extending even to bargaining contracts (US V S-E Underwriters Association (1944) 322 US 533, importation for personal consumption (US V Simpson (1919) 252 US 465); mere transmission without profit or intention to profit (US V Hill (1919) 248 US 420) and transportation by all means such as by land, air or water, over the telegraph, telephone (Pensacola Tel. Co., V W.U. Tel. Co., (1877) 96 US I) or wireless (Fishers Blend Station V State Tax commission (1936) 297 US 650). Commerce would thus include tangible or intangible goods e.g., Telephonic message, gas, post etc. It will also cover transportation of men, animals by common carriers, private conveyance or by foot. Thus commerce comes to include nearly 'Intercourse' also.

No State shall impose a prior restraint upon trade and commerce as between itself and any other State. It is the same if it relates to inter-State trade alone or domestic trade. In McArthur V Queensland (1920) 28 CLR 530 it was held any subsequent punishment is also an infringement of the freedom in so far as it acts as a prior restraint deterring trade by fear of punishment. The freedom is both for the instruments by which inter-State trade is carried on but also for the persons engaged in it. (Sherlock V Ailing 93 U.S. 99). Brown V Marryland (1827) 12 Wheat 419 decreed that a state cannot impose a tax on its citizens on the occupation of importing goods from other States as such. Nor can it tax citizens of other States for trading with itself (Moran V New Orleans 112 US 69).

In U.S.A. there can be not even indirect discouragement of Inter-State commerce. In Pennsylvania V Virginia (1923) 262 U.S. 553 a Virginia Act was not sustained because it gave preference in the use of natural gas produced in the State. The prohibition is in regard to restraint of Inter-State trade and commerce as such only. It does not limit the general taxing powers; Goods that are negotiated for Inter-State commerce can be taxed within a State under the general tax powers (Ficklen V Shelby Taxing District 145 U.S. I) Freedom of trade does not include the freedom of choice of means of transport by air, water, motor, or railway or by foot Duncan V Vizard (1935) 53 CLR 493. This principle is made clear in art. 302-3 of the Indian Constitution.

The only limitations in U.S.A. re Inter-State commerce are contained in Art. 1, Sec. 9 (5) (6) (compare Art. 302-3 of Indian Constitution) which prohibit taxation on articles exported from any State, or preference to ports of one State over those of others, or payment of duties by vessels bound from one State to another. The discrimination prohibited is between State and State and not between posts in the same State (Pennsylvania V Wheeling Co., 18 How 421). Discrimination implies 'singling out a Government and specifically legislating about it (New York V U.S.A (1946) 326 U.S. 572.

The restrictions on Inter-State trade in U.S.A. is derived from the doctrine of Police Power of the State. The term 'Police power' is of judicial origin and has no place as such in the constitution of U.S.A. Regulation of Inter-State Commerce is exclusively a federal subject. But a State can exercise its police power within its area though it may incidentally affect Inter-State commerce. Art. 303 of the Indian Constitution enumerates specifically when this can be done in public interest. This expliciteness is absent in the American Constitution where it is left to judicial interpretation. But this Police power is subordinate to the permanent right of the congress to regulate Inter-State commerce.

The Police power of the States gives room to impose (i) reasonable restrictions (ii) which does not discriminate against inter state commerce as such (iii) and which does not contravene any existing Federal Legislation; (iv) Even in the absence of Federal Law, in case the matter is of a sufficiently important nature so as to invite federal action, and where uniformity is essential for the functioning of commerce as such, no state shall embark on imposing restrictions under its police powers. Silence of the congress should be deemed by implication to forbid State action relating to that matter (Coolly V. Philadelphia port 1851) 12 How. 299. Under its Police powers a State can prohibit fraud, deception, public safety and morals, protection of lives, health and comfort of its citizens. Such restrictions are as to:

(i) Inspection and labelling of goods to prevent fraud as to quality and weight (Armour & Co., V. N. Dakota 1916) 240 U.S. 510;

(ii) require all locomotives within a State to be equipped with headlights of particular candle power on the ground of public safety (Smith V Alabama 1888) 124 U.S. 465;

(iii) make quarantine laws and regulations in the interests of health and morals (licence cases 1847) 5 How 504;

(iv) prohibit importation of dangerous property such as animals having a contageous disease in the interests of protection to the property of citizens (Missouri V Haber 169 U.S. 613).

All such restrictions should be 'reasonable'; 'unreasonable restrictions are 'Burdens on commerce and so are invalid (Illinois C. R. Co. V Illinois 163 U.S. 142). If the restrictions are discriminatory against the goods of other States then also it is invalid (Welton V Missouri 1875) 91 U.S. 275. Just as art. 304 cl. (b) of the Indian Constitution enjoins previous sanction of the President for imposing reasonable restrictions in public interest in the American Constitution we have the clause "No state shall, without the sanction of Congress lay any imports or duties on imports or exports except what may be absolutely necessary for executing its inspection laws."

3. *Trade, Commerce and Intercourse in Australia*

In the commonwealth of Australia Act Sec. 92 States "on the imposition of uniform duties of customs, trade, commerce and intercourse among the States whether by means of internal carriage or ocean navigation shall be absolutely free." In Canada Sec. 121 of the British North American Act puts it differently as

'All articles of the growth, produce, or manufacture of any one of the Provinces shall from and after the Union be admitted free into each of the other provinces.'

Sec. 92 of the Australian Act provides for only Inter-State Freedom of trade. But in Art. 301 of the Indian Constitution Inter State freedom is vouchsafed subject to certain limitations covered by art. 302 to 304. Freedom to trade presupposes freedom of personal movement throughout the country and freedom to reside in any part of the country — vide Motilal V Uttarpradesh Government AIR 1951 All. 237 and Art. 19 (d) and (e). In addition to this freedom of movement, there is envisaged a freedom to every citizen to trade with any part of the country. In James V Commonwealth of Australia 1936 AC 578 it is postulated "The idea starts with the Admitted fact that Federation in Australia was intended (inter alia) to abolish the frontiers between different States and create one Australia. That conception involved freedom from custom duties, imports, border prohibitions and restrictions of every kind."

In Australia the word 'intercourse' is interpreted as 'Non-commercial intercourse' to include all migration or movement of persons from one State to another (Duncan V Queensland 1916) 22 CLR 556. 'Trade and Commerce' has also a wide interpretation. In McArthur V. Queensland (1920) 28 CLR 530 it was said to include "the mutual communings, the negotiations verbal or by correspondence, the bargain, the transportation and the delivery at all ports of that class, of relations between Banking which the world calls 'trade and commerce.' This wide interpretation has allowed 'Banking' to come under the expression vide Australia V Bank of N.S.W. (1949) 2 AER 755. Again in Victoria Stevedoring Co. V Dignan (1931) 48 CLR 73 it was held that the commerce clause enabled the commonwealth Parliament to regulate the engagement, service and discharge of transport workers and to provide for their licensing and protection and to prohibit employment of unlicensed workers. In McArthurs' case it was specified that the import of the words 'Trade and Commerce' is essentially the same to the American, Australian and Englishman. In the Indian Constitution the same meaning is followed.

Any restriction on the freedom of trade is unconstitutional. In James V Cowan (1932) AC 542 it was held that if a state acquires the whole of a commodity with the real object of preventing it being sent to other states, that acquisition is invalid. Only Inter-State trade and commerce as such is not to be restrained. General taxation is no bar and should not be dubbed as a restraint to commerce or trade. The restraint must be reasonable in law. In James V Commonwealth (1956) 55 CLR 1 (54) P.C. it is finally settled that the freedom of trade intercourse and commerce guaranteed under Sec. 92 of the Australia Constitution is also binding on the Parliament of the commonwealth. In this case it was held that surplus fruits of the Australian market involved fixing the limit for Australian consumption and secondly the prevention of sale of the balance of output in Australia and so the acquisition of fruit made by ministerial order violated Sec. 92 and interfered with trade and Commerce. Thus it is valid to provide a compulsory marketing scheme for inter-State producers. Peanut V. Rackhamshire Harbour (1933) 43 CLR 266. In a subsequent case it was held that Parliament was entitled to make regulations in the interests of public health; that it can forbid 'objectionable trade practices inrespective of any State boundary e.g. exchanging 'gifts' for coupons vide Home Benefits Ltd. V Crater (1938) 61 CLR 701 that it can under Sec. 51 VI regulate though not prohibit transport in the interest of National Security. Vide Farey V Burvet (1916) 21 CLR 433.

In Australia 'Discrimination' is not countenanced; Sec. 99 of the Constitution States — "The Commonwealth shall not by any law or regulation of trade, commerce or Revenue, give preference to one State or any part thereof over another State or any part thereof. This prohibition against preference applies only to laws and regulations of trade and commerce under Sec. 51 (1) and not under other provisions such as the Defence Power of the commonwealth — vide (1938) 61 CLR 701 supra. As laid in Brooks V U.S. (1925) 267 U.S. 432 when special burden is imposed by a State on some goods on the ground that they have come from another State, 'discrimination is said to set in.

In Australia it has been held in McArthur V Queensland (1920) 28 CLR 530 that the freedom vouchsafed under Sec. 92 is not of the 'goods' or persons but of the 'acts which constitute Trade commerce and intercourse. Sec. 112 authorises the States to impose inspection charges on imports or exports as under Art. I.S. 10 (3) of U.S.A.

The American doctrine of exclusiveness of the Federal power over Inter-State commerce is absent in Australia where there is specific guarantee of freedom of Inter-State trade and Commerce in Sec. 92. Under Sec. 51 (1) the commonwealth Parliament can only make laws with respect to Trade and Commerce with other countries and 'among the States.' In Hoddart Parker Ltd. V

Moorhead (1908) CLR 330 the word 'among' has been viewed as 'intermingled with'. In James V Commonwealth 1936 A.C. 578 it is stated that a State has concurrent power to legislate with respect to Trade and commerce subject to Sec. 92 by virtue of Sec. 109. Intra-State (i.e. trade within a State) is given exclusively to the States by Sec. 107. In Canada however by Sec. 91 (2) only 'Trade and Commerce' can be regulated but not Intra-State or internal trade of a Province.

The American theory of 'Police Power' extending power in respect of all public needs of high import, is not welcomed in Australia. Ofcourse Sec. 113 of Australian Constitution is a form of Police power authorised by the Constitution. It reproduces the Wilson Act of U.S.A. In Fox V Robbins 8 CLR 115 it was held that Inter-State transit of liquors should end one stage earlier in order that Police laws of the State might begin to operate in the liquors at an earlier stage.

Further Sec. 92 is no bar to expropriation of any commodity within a state as it has sovereign powers to deal with it—vide wheat case 20 CLR 54. The principle is that it is an exercise of the power of acquisition for public Safety, necessity, convenience or welfare such as defence against enemy, prevention of famine, diseases etc.

4. *Analagous principles in the Indian Constitution*

In our Constitution the American subtleties of Inter-State and Intra-State commerce are avoided by the use of words "within a State" in Entry 26 of List II where the head is "Trade and Commerce within a State subject to provision of Entry 33 of List I. But in the very nature of things, the residuary power which the union Government derives from Entry 97 of List I is not 'trade within a State.' The centre has thus plenary powers. The original package doctrine of U.S.A. is needless in India. The State is merely concerned to see to the substantial character of the trade and commerce if it is a domestic trade or a trade within a State or an 'Inter-State trade.' In case it is the latter there is no question of terminus as the Federal Power extends to that field. Foreign trade and commerce is a federal subject entry 41 List I. The Legislative power regarding trade and commerce within a State or between two different States are threefold ;

1. Entry 42 List I	Inter-State Trade and Commerce
2. " 26 " II	Trade and Commerce within State [subject to entry 33 in List III]
3. " 33 " III	Trade and Commerce in and production supply.

and distribution of the products of industries whence the control of such industries by the centre is declared by Parliament by law to be expedient in public interest. On an examination of the three entries read with Art. 246 it will be seen that since State and concurrent powers are subject to the exclusive power regarding items in List I, it follows that Parliaments' jurisdiction is quite exclusive in 'Inter-State trade and Commerce,' Subject to States' jurisdiction which is restricted to the Provisions of Art. 304 by which a State can tax goods from outside State so as not to discriminate with those produced or sold within a State. It again permits regulation by reasonable restriction in public interest provided the previous sanction of the President is obtained. This is analogous to the police power of USA for protection of domestic peace, order, health or morals.

It is worthy of note that in our constitution the word 'regulation, (American usage) is omitted as that may connote no power to prohibit. In India both the Union and State legislature have power to prohibit any particular trade or commerce subject to the provisions contained in Art. 303-305.

If trade and commerce is within a state the state legislature has all the powers subject to unions' intervention under Art. 246 (3). If it is an 'industry within a State Parliament has power by virtue of entry 52 List I. Thus entry 26 of List II is always subject to the Unions' power exercisable under Entry 42 of List I and 33 of List III. Entry 52 List II i.e. taxes on the entry of Goods into local area for consumption is 'octroi' different from the terminal tax. It is leviable when there is (i) entry of goods into a definite local area (ii) the goods are for consumption, use or sale therein. So when the goods merely pass through the local area no such duty could be levied.

Art. 19 (i) G and 301 may be compared and then it will be found that while Art. 301 "contemplates the right of trade, business or *intercourse* in *Motion* Art. 19 (1) G secures the right of occupation trade or business at rest." (Vide Motilal V Uttar Pradesh Government AIR 1951 All 257). Under our constitution States can impose taxes on sale or purchase of goods (entry 64 List I) only within a State. It has no such jurisdiction if the sale is outside the State and the delivery of the goods has also taken place outside the State (vide Art. 286 (1). Again the State Legislature has no power without the authority of a Union law to impose a Sales Tax on sale or purchase of goods in the course of Inter-State commerce under Art. 286 (2). Thus by separation of three lists, State, Union and concurrent the spheres of power, of each is well-defined and the confusion arising in America or Australia is absent in India.

In Art. 301 the words 'throughout the territory of India' connote freedom of trade, throughout India and the power of the Union is thus not restricted as in Australia where trade commerce and intercourse '*among*' the States alone are guaranteed to be absolutely free. 'Among' means 'between one state and another'. Then again the absence of word 'absolutely' in Art. 301 makes it clear that there are certain restrictions, such as covered by public interest (Art. 302 and 304) e.g. military necessity, health, morals, scarcity in other areas etc. Public interest will include the power to forbid immorality, dishonesty, fraud, spread of an evil to another State, to exclude harmful substances from inter trade and commerce such as impure food, animals with contageous diseases etc. The power to prohibit entry into particular areas on military grounds also comes under the category of 'public interest' vide Gopalan V State of Madras 1951 S.C.J. 173.

In Australia it required a judicial determination (vide Morgan V Commonwealth (1947) 74 CLR 421 to declare that "it would indeed be a remarkable thing for a constitution to provide that the laws for the defence of a country at a time possibly of the most critical threat to national existence should be limited by a requirement that they should not have the effect of giving some commercial preferences to parts of the country over other parts.'

This has been simply avoided by the wording in Art. 302 which prohibits any discrimination or exercise of preference by parliament only regarding the entry relating to trade and commerce. Other matters such as 'defence' etc. are not touched. The prohibition of discrimination ensures to both Inter-State and Intra-State trade or commerce. But if the legislative power is from any other entry than those that relate to trade and commerce, Art. 303 cannot be invoked to challenge that legislation. The provision of clause (a) of Art. 304 follows American decisions that a State may tax goods imported from another state only if it taxes domestic goods and there is no discrimination shown regarding imported goods by such tax. The word 'reasonable restriction' is present in Art. 304 when it deals with Inter-State and Intra-State commerce. But the word 'reasonable' is absent in Art. 302 when the restriction is imposed on account of public interest. In such an event it may be argued that Court can have no power to test the reasonableness of the restrictions imposed in public interest by Parliament under

Art. 302. This is contrary to the Australian practice vide exparte Benson (1912) 16 CLR 99. But the word 'reasonable' occurs in clause (5) and (6) of Art. 19 (vide Goplan V State of Madras (1950) SCJ 174. Courts can scrutinize all such legislations following American precedents.

In Gopalan's case (1950) SCJ 173 the word reasonable was taken to mean 'commensurate with the purpose for which the restriction is laid down.'

It may be added that 'inter-state migration' and 'inter-state quarantine' are exclusively Federal subjects in our Constitution Entry 81 List 1.

Art. 307 empowers Parliament to appoint an authority similar to the Inter-State Commerce Commission of USA to carry out the purposes scheduled out in the Art. 301, 303 and 304.

Thus we have seen by a full discussion of the matter that trade, commerce and intercourse in India is amply provided for in our Constitution in the light of experience gained by a study of the American and Australian Constitutional law on the subject.

5. *Removal of Inter-State Prisoners.*

It may be passingly noted that Entry 4 of List III concurrent deals with Inter-State relations regarding removal from one State to another of prisoners, accused persons and persons subject to preventive detention for reasons specified in Entry 3 of the list. Inter-State delivery of criminals, is rightly a concurrent subject as the criminal may seek to escape punishment by escaping into another state. There is therefore an obligation on the part of state to deliver such persons to the state concerned and for this there can be legislation by the centre or the State. This is distinct from extradition which comes under entry 18 List I and that takes an 'international' aspect while the entry 4 of List III is inter-state within India.

6. *Inter-state relations and Presidential Intervention*

The normal functioning of the constitution in Part A and B states has been generally dealt with in respect of Inter-State Interstatal relationship. But our Constitution though federal can become unitary at times of emergencies as contemplated under Art. 352, when the President takes all the powers into his hands; then the position of the States is as in a unitary state.

The President has three kinds of powers, normal, emergency and temporary.

1. *In the normal sphere* the President has little of legislative powers. He can withhold assent (except in case of money bills) and return a bill to parliament for reconsideration (Art. 254) but if it is again passed with or without amendment, his assent must be given. State laws dealing with concurrent subjects have to be reserved by the Governors for the President's consent (Art. 31-3 24, 286). When Parliament is not in session and necessity arises the President can promulgate ordinances (Art. 123). In the executive sphere, the President as head of the Executive runs the entire administration in his name though aided by his cabinet. The President has also financial powers of far-reaching importance. No money bill can be introduced into Parliament without the President's recommendation (Art. 117 and 274). He can operate on the contingent Fund of India and make advances to meet unforeseen expenditure, pending subsequent authorisation by Parliament (Art. 267 (i)). He has also the power to determine the share of the proceeds of income-tax to the various states and also the annual grants in aid to some states in lieu of their share of Jute export duty (Art. 267 (i). He has power to appoint from time to time finance commissions to make recommendations on the Union-State financial relations (Art. 280). He also determines the state contributions towards the Privy purses of the Rulers whose territories accede to the Union (Art. 291). The judicial power of the President consists in his power to pardon offenders or to remit, suspend or commute their sentences.

II. *In the Emergency sphere* the President can issue three kinds of proclamations : —

(i) when the security of the country is jeopardised by external aggression or internal disturbance; (Art. 352 (i);

(ii) when there is failure of constitutional machinery Art. 356 (i);

(iii) when there is financial emergency (Art. 360 (i).

These proclamations unless approved by both the houses of Parliament can ensure only for two months. When there is failure of the constitutional machinery the proclamation can last only for 6 months from the date of approval by Parliament. The latter can further renew it for a period of six months at a time. The maximum is 3 years. The President can revoke his prior proclamation by a fresh one.

PROCLAMATIONS

I. *When the security of the country* is the cause for the proclamation, the result is :

(a) The Union Parliament can legislate on any matter (in any List I, II or III) Art. 353 (b);

(b) The Union Government may give directions to any State as to the manner of its exercise of executive power and union officers may step in the place of State officers and do their duties (Art. 353 a and b).

(c) The distribution of revenues between the Union and States as indicated in Art. 269 to 279 may be modified by order of the President as he deems necessary. These must be laid before the two houses of Parliament. (Art. 354).

(d) Art. 19 will cease to operate in the States. Laws and executive action in contravention of the citizens' fundamental right to freedom will have temporary legal recognition (Art. 358).

(e) All fundamental rights get suspended. Then no courts can deal with such rights. The period of suspension will be for the period of the proclamation or a shorter prescribed period.

II. *When the failure of constitutional machinery* results in a proclamation :

(a) the President may assume all the executive functions of the State authority;

(b) and he may transfer the powers of the State legislature to the Union Parliament but he cannot take away the powers of State High Courts;

(c) Parliament may then transfer State Legislative power to President who may also delegate it to any other authority.

(d) The President may also authorise expenditure from the consolidated Fund of the State when the house of the people is not in session.

III. *When there is a proclamation of financial Emergency.*

(i) The Union Government may give such financial directions to the State authority as it deems fit.

(ii) Salaries of State Officers, Union Officers including judges of the Supreme Court and High Courts may be ordered to be reduced.

(iii) All money bills after they are passed by the legislature of a State may be required to be reserved for the President's consideration.

Temporary powers of the President: These are of three kinds: (*i*) Those exercised to overcome difficulties during the transition period from the Government of India Act. 1935 to the date of the commencement of the Constitution. Under this he can make alteration to the units of the Federation (Art. 391), to issue directions to Part B States for a period of 10 years or more or less from the commencement of the Constitution as the Parliament may prescribe (Art. 371); He can make adaptations in the law of the country to bring in line with the Constitution during the first two years (Art. 372-2) to determine the population of India or part thereof for purpose of elections during the first three years (Art. 387), to adopt and modify even the provisions of the Constitution to overcome difficulties of the Transition period (Art. 391) till the first meeting of Parliament after the first general elections.

(ii) There are temporary powers for the President to deal with urgent matters until parliament provides e.g. preventive detention under Art. 22 (7), rules for recruitment of Secretariat staff of the two houses of Parliament (Art. 28-3), custody of the consolidated fund of India (Art. 283 (ii), to determine the shares of States in the proceeds of income tax (Art. 270-4) and the grants-in-aid out of union revenues to certain states (Art. 273, 275).

(iii) There are other temporary powers of the President for specified periods. Though English is retained as official language for first 15 years, the President can authorise the use of Hindi in addition for such official purpose as he deems fit (art. 343-2 proviso). He can determine the pace of progressive use of Hindi. (Art. 349). He has to provide for special representation of minorities during the 1st 10 years e.g. Anglo Indians (Art. 331 and 334).

7. *General — Conclusion*

We have studied in detail the Inter State and Intra State relations before and after the advent of Independence in India. We have specially seen how our New Constitution is modelled on the various Federal Constitutions of the World. To summarise we have seen that our Union comes nearest in approach to the Canadian Union in its form. Like Canada we have adopted the name 'Union' instead of a federation, and further accorded like Canada unequal representation to the Units in the Upper House, copy the system of appointment of State Governors by the Union President, vest the residuary power to the Union and also recognize a unified judiciary. But unlike in Canada where each province can amend the provisions relating to the Constitution, in India the power of amendment of the Constitution is left to the Union parliament only. Of course the Canadian provinces have to recommend the required amendment to the British Parliament which has the final say in the matter. In Canada the Union Government has a general power for disallowing provincial acts while in the Indian Union no such power exists except the Presidents' power to give assent after reservation in some specified cases.

In Australia however the component States get a more exalted place than India. The States have their own Constitutions which they can amend wihin the limits of their powers. The individual existence of the States is specially protected and so are these powers. This is particularly so on account of the difficult procedure of constitutional amendment. The States in Australia unlike India are given equal representation on the Senate which is a powerful body for purpose of legislation. Unlike India there the federal and concurrent list is limited and small. The States have larger powers than in India. The residuary power vests with the States while in India it vests in the Union.

In the case of the United Sates of America and Switzerland, their States and customs respectively are in a better position than in India. Their units are nearly sovereign in their spheres. The existence of the units is perpetually guaranteed and their territories are inviolable unlike in India. There is equal representation in the senate for the States which can be altered only with the consent of the concerned State legislature. In both countries it is difficult to herald amendments to Constitution. The States and their people have a great say in that matter. Their units are financially better and they possess the residuary powers while the federal Government has only enumerated powers. Their concurrent list is indeed small and federal intervention in State matters is not ordinarily possible and is reduced to the minimum.

It may be stated that the States of India occupy a similar position as the States of the German federation of 1919 particularly in field of presidential powers, the union's power of direction and control of the States and the financial independence and supremacy of the Union. The question may be put whether the Indian constitution is truly federal with so much of power left with the centre and the President so as to be utilised as in a unitary State. The essence of federation is the composition of several units (States) having their own Governments. There must be a division of powers between the centre and the units which cannot be varied by the unilateral action of one party only. In this context our Indian Constitution is truly federal. For, the very first articles of the Constitution speak of India that is Bharat shall be a Union of States. No doubt the States' area is not made inviolable. This is due to the fact that we are yet in the process of making adjustments of areas on linguistic basis, not to speak of the situations that constantly arise on account of the integration of States restricting in coalescing the areas of several states in part B and C with the adjacent major states so as to evolve a component state which can be a strong and well knit state financially and administratively. Till this process is completely achieved the units have to be elastic. Regarding the 2nd test of separation of powers, there is a strong federal centre with definite powers defined for the Union as well as the States in the Constitution itself. This cannot be varied except in case of emergencies or when there is a constitutional breakdown, when alone the federal centre assumes the role of a unitary Government. This is absolutely necessary in the present set up of Indian conditions with states of varied maturity in the field of administration. India is of the size of a continent and it is very difficult to pull all the parts together. Varied peoples of various religions, various stages of intellectual and constitutional development of the member states and their people, all this necessitate welding of all of them together and preventing their breaking away. And so, a strong federal centre with unitary powers in times of emergencies is of the utmost necessity. Of course in normal times the States in India are independent of the Union centre in their sphere of legislative or executive activity. May be they look to financial aid from the centre but that is inevitable, in the scheme of such a federation. For it is the States' money that go to the centre for equitable distribution back to the States. To have vice versa i.e., to make the union dependent on the States for perpetual financial contributions will hardly fit in with the theory of a strong centre. May be the Union Government's share of powers is larger than in other Federations such as U.S.A., Canada and Australia. But it must be remembered that our Federation is yet in the infant stage whence the *units* must be nurtured, fostered and rejuvenated gradually so as to attain the full status of truly developed States. The States of U.S.A. were autonomous well knit

units even prior to the advent of the American Federation. But in India they were priorly mere administrative units of the British period which at best now provide as starting points for the Institution of Federalism treating these administration units as some kind of units for States of the new Federation of India. Unless the centre has larger powers, it cannot govern, control and shape these immature states of varied stages of development. To give the Federal centre larger powers in no way detracts the federal character of our Union. After all the normal working is truly federal in India. Only in abnormal times the unitary form of Government is introduced for a specific period. An emergency after all is an emegency and knows no law. It is inevitable that at times of grave crisis Government of any country will tend to be unitary. Even in U.S.A. and Switzerland the federal army had to engage in a civil war with the units so that the latter may not break away from the federation. There was no specific power given to the Congress in the Constitution to wage war with the States. Our Constitution is better in that it makes everything specific. There is no use of using such bombast as federal equality of the centre with the componant units and yet as in U.S.A. do just the contrary thing in practice whereby in every field federal supremacy is ushered by the back-door of judicial interpretation, or by the extra door of emergencies and national peril. We are indeed plain in our Constitution in all such matters. But normally ours is a truly federal structure. In fact more than a constitution it is the way and the spirit with which the people work it that shape a country's constitutional evolution. A high sense of patriotism and a high degree of constitutional forbearance to evolve high efficiency in the national onward march in the constitutional, industrial economic, educational and financial field — these are necessary to make us a respected member in the comity of nations. If we have checks and counter-checks in our Constitution for enabling us to march onwards in the process of constitutional advancement we should not fight chary of it.

In fact in the first few years after our Independence, with so much of federal supremacy, we have witnessed in some States a behaviour which betokened a notion that no central Government existed. That is a mentality that has to be erased. Some of us are immature rebels ready to bring disaster on ourselves. Therefore it is for our own good that a strong and supreme centre is envisaged in the constitution of India. We are passing through a period of initial crisis. We have become all of a sudden a free people. The intelligence that secured this freedom by leading the fight for independence is receding to the back ground as too many Cromwells encouraged by the universal adult suffrage and the consequent sanction for mass leaders, now threaten to conquer the administrative and legislative machinery. This is inevitable in our evolution. The ignorant masses will be fickle and their leaders will be more fickle for a time till all round education, economic emancipation, and schooling in the art of Government will produce conditions wherein we may have stability of thought, stability of discrimination in what is good for the country, stability in our political affiliations and stability in our methods of outlook on administrative legislative and financial matters affecting the governance of the country. Till that haven is reached we must needs be jostled about in the troubled waters of political emancipation. To steer through the storms and in winds of political turbulance due to immaturity of thought and want of experience, we must need a strong and supreme federal structure which will guide the nation ultimately to the post of constitutional perfection. We cannot take risks about the preservation of our national unity by making the centre weak. We require the centre to be ever so stong as to make us function as a single economic unit, financially and administratively superb and internationally respected. May the Almighty give us the strength to achieve this goal.

Let me thank you gentlemen for the patience with which you have been listening to this rather long peregrenation in the field of constitutional structure of our Union vis a vis the componant units.

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