and rules where by the community is organised, governed, and held together.  

**CLASSIFICATION:** While possessing a common characteristic in content, constitutions differ greatly in type. Some writers clarify them into cumulative or evolved and conventional or *enacted.* Constitutions are now divided for brevity and definiteness into written and unwritten although the distinction between them is more or less the same as is between evolved and enacted constitutions. However this classification was not only confusing but also unscientific. Prof. Strong calls it as false, misleading and illusory. Accordingly Bryce suggests a new type of classification as flexible and rigid. The basis of classification is the relation which the Constitution bears to the ordinary law.

**CHARACTERISTICS OF GOOD CONSTITUTION:** A good constitution must possess certain characteristics. They are:

- It should be definite and precise;
- It should be expressed in a clear language as possible because even the slightest ambiguity or doubt may lead to conflicting interpretations.

- It should be comprehensive;

- It should be more definite and less uncertain;

- It should cover the whole field of governmental organisation and Clearly enunciate the principles for the exercise of all political power; and

- Stability and flexibility are the two prime requisites of a good Constitution.

The Constitution of India is a native gift to the Indian people. It is the result of the deliberations of the Constituent Assembly - a representative body of the Indian citizens established in 1946 under the Cabinet Mission Plan which met on December 9, 1946. The members of this Committee were elected indirectly by Provincial Legislatures by the system of Proportional Representation by means of a Single Transferable Vote. This Assembly adopted an objective resolution on January 22, 1947 and appointed a number of
committees to report on the various aspects of the proposed Constitution. On the basis of their reports, a draft Constitution was prepared by the Drafting Committee of the Constitution under the Chairmanship of Dr. Babasaheb B.R. Ambedkar. This Constitution comprising of 395 Articles and nine Schedules was presented for discussions on November 5, 1948 which was finalised and adopted by the Assembly on November 26, 1949. This Constitution came into force on January 26, 1950 with Dr. Rajendra Prasad as the President of the Constituent Assembly earlier and as the first President of independent India.

The single most important political event of the twentieth century should be discovered in the framing of our Fundamental Law or the Basic Law of the Land. This great achievement, rather the greatest one in the flow of the constitution of India framed for the people of India by 'we the people of India' signified two salient facts. First that though this great country of India 'was and also is, a museum of races, languages, religions and cultures, but inspite of it all, there
was a unity in its diversity or rather there was a social and cultural unity and political diversity, the latter never being able to disturb the former. Second the Grand Assembly is the only machinery that is constituent with the principles of self-determination accepted to-day as much by the British as by the people of India, a principle according to which the Constitution should be framed by the Indian for the 'Indians' in accordance with the Indian conceptions.

The Constitution makers have given us a Constitution unique in several respects. The salient features of Indian Constitution are:

**The Lengthiest Constitution in the world:** The Indian Constitution is the lengthiest and the most detailed of all the written constitutions of the world. While the American Constitution originally consisted of only seven Articles, the Australian Constitution 128 Articles and the Canadian Constitution 147 Articles but the Indian Constitution consisted of 395 Articles divided
into 22 Parts and 9 Schedules originally in the beginning. After the 68th Amendment in 1991, this Constitution consisted of 408 Articles divided into 24 Parts and 10 Schedules. This extraordinary bulk of the Constitution is due to several reasons:

- The framers of the Indian Constitution had gained experience from the working of all the known constitutions of the world. They framed the Chapter on the Fundamental Rights on the model of the American Constitution, and adopted the Parliamentary System of Government from the United Kingdom, the idea of the Directive Principles of State Policy from the Constitution of Ireland, and added elaborate provisions relating to emergency in the light of the Constitution of the German Reich and so on.

- The Indian Constitution provided for the Constitution and working of the structure not only relating to the Central Government but also of the States and Union Territories and unlike the American Constitution which leaves the states to
draw up their own constitutions.

- The vastness of the country and peculiar problems relating to varied languages spoken by the people and diversified cultures made the Constitution to take a bulky form.

- The Constitution contains a long list of Fundamental Rights and also a number of Directive Principles, which confer no justiciable rights upon the individual. Though these directives by their very nature could not be made legally enforceable, yet the framers incorporated them in the constitution with a view that these would serve as constant reminders to the future governments that they would have to implement them in order to achieve the ideals of the welfare state as envisaged in the Preamble of the constitution. This explains infact why the Indian constitution has detailed provisions about the organisation of the judiciary, the services, Electors and many transitory provisions and the like.

**ESTABLISHMENT OF A SOVEREIGN, SOCIALIST, SECULAR DEMOCRATIC**: The Preamble of the Constitution declares
India to be a Sovereign, Socialist, Secular, Democratic Republic.

The word 'Sovereign' emphasises that India is no more dependent upon any outside authority. It means that both internally and externally India is sovereign. Its membership of the Commonwealth of Nations and that of the United Nations Organisation do not restrict her sovereignty.

The term 'socialist' has been inserted in the Preamble by the Constitution 42nd Amendment Act, 1976. This concept was already implicit in the Constitution. The Amendment merely spells out clearly this concept in the preamble. The word 'socialism' is used in Democratic as well as Socialistic Constitutions. It has no definite meaning. In general however the word Socialist means some form of ownership of the means of production and distribution by the State. The degree of state control will determine whether it is a democratic State or Socialistic State. India has, however, chosen its own brand of socialism with mixed economy.

The term 'Secularism' means a State which has
no religion of its own as recognised religion of state. It treats all religions equally. In a secular state the State regulates the relation between man and man. It is not concerned with the relation of man with God.

The term 'Democratic' indicates that the constitution has established a form of Government which gets its authority from the will of the people. The rulers are elected by the people and are responsible to them. Justice, Liberty, Equality and Fraternity which are essential characteristics of a Democracy are declared in the Preamble of the constitution as the very objectives of the Constitution. The Preamble to the Constitution declares that the Constitution of India is adopted and enacted by the people of India and they are the ultimate masters of the Republic. Thus the real power is in the hands of the people of India, both in the Union as well as in the States.

The term 'Republic' signifies that there shall be an elected Head of the State who will be the chief executive head. The President of India, unlike the British King is not a hereditary monarch but an
elected person chosen for a limited period.

**Parliamentary form of Government**: The Constitution of India establishes a Parliamentary form of Government both at the central as well as the states. In this respect the makers of the constitution have followed the British model in toto. The reason for this is that Indians were accustomed to this type of government. The essence of the parliamentary form of government is its responsibility to the Legislature. The President is the Constitutional Head of the State. The real executive power is vested in the Council of Ministers whose head is the Prime Minister. The Council of Ministers is collectively responsible to the Lower House i.e., Lok Sabha. The members of the Lower House are elected directly by the people on the basis of adult franchise normally for 5 years. The position is thus same in the case of States. This Government is therefore usually called as 'Responsible Government!

**UNIQUE BLEND OF RIGIDITY AND FLEXIBILITY**: It has been the nature of the amending process itself in federations which had led political scientists to classify
federal constitution as rigid. A rigid constitution is that which requires a special method of amendment of any of its provisions, while in a flexible constitution any of its provisions can be amended by ordinary legislative process. A written constitution is generally considered to be rigid. The Indian Constitution though written, is sufficiently flexible. It is only a few provisions of the constitution that require the consent of half of State Legislatures. The rest of the provisions can be amended by a simple majority of Parliament.

A FEDERALISM WITH STRONG CENTRALISING TENDENCY: The most remarkable feature of the Indian Constitution is that being a federal Constitution it acquires a unitary character during the time of emergency. During the proclamation of emergency the normal distribution of powers between the centre and the states undergoes a vital change. The Union Parliament is empowered to legislate on any subjects mentioned in the State List. The Central Government is empowered to give directions to States as to the manner, in which it should exercise
its executive powers. The financial arrangements between the Centre and States can also be altered by the Union Government.

**FUNDAMENTAL RIGHTS** : The incorporations of a formal declaration of Fundamental Rights in Part-III of the Constitution is deemed to be a distinguishing feature of a democratic State. These rights are prohibitions against the State. The State cannot make a law which takes away or abridges any of the rights of the citizens guaranteed in the Part-III of the Constitution. If it passes such a law it may be declared unconstitutional by the courts. But mere declaration of certain fundamental rights will be of no use if there is no machinery for their enforcement. Our constitution has, therefore, conferred on the Supreme Court the power to grant most effective remedies in the nature of writs, Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari whenever these rights are violated. It must, however, be clearly understood that fundamental rights are not absolute rights. They are subject to certain restrictions. Thus our constitution tries to strike a balance between the individual
liberty and the social interest. The idea of incorporating a Bill of Rights has been taken from the Constitution of the writer States. But the guarantee of individual rights in our Constitution has been very carefully balanced with the need for security of the state itself. Thus during the proclamation of emergency all powers are centralised in the Union Government and the Constitution acquires a unitary character. This combination of federal and unitary system is unique feature of the Indian Constitution. This feature of the Constitution can be better understood in the historical background upon which the federalism has been introduced in India and also in the light of the experience in other federal countries.

**ADULT SUFFRAGE**: The old system of communal electorates has been abolished and the uniform adult suffrage system has been adopted. Under the Indian Constitution every man and woman above 18 years of age has been given the right to elect representatives for Legislature. The adoption of the Universal Adult Suffrage (Art 326) without any qualification either
of sex, property, taxation, or the like is an experiment in India, having regard to the vast extent of the country and its population, with an overwhelming illiteracy. This suffrage is wider than all the democratic countries which have given right to vote to their people. In spite of many difficulties, this bold experiment has been crowned with success. This is evident with the increased number of voters on the electoral rolls in the general elections.

**INDEPENDENT JUDICIARY** : Mere enumeration of a number of fundamental rights on a constitution without any provision for their proper safeguards will not serve any useful purpose. Indeed, the very existence of a right depends upon the remedy for its enforcement. Unless there is remedy there is no right, goes a famous maxim. For this purpose an independent and impartial judiciary with a power of judicial review has been established under the Constitution of India. It is the custodian of rights of citizens. Besides, in a federal constitution it plays another significant role of determining the limits of power of the Centre and States.
A SECULAR STATE: A secular State has no religion of its own as recognised religion of State. It treats all religions equally. The preamble declares the resolve of the people of India to secure to all its citizens "liberty of thought; .... belief, faith and worship". Articles 25 to 28 of the Constitution give concrete shape to this concept of secularism. It guarantees to every person the freedom of conscience and the rights to profess, practice and propagate religion. In a secular State the State only regulates the relationship between man and man. It is not concerned with the relationship of man with God. One may worship God according to the dictates of his own conscience. However it is to be noted that the freedom of religion is not an absolute freedom, but subject to the regulatory power of the State. In the name of religion nothing can be done which is against public order, morality and health of the public. Secularism also subject to democratic" Socialism. Religious freedom cannot therefore be used to practice economic exploitation. The right to acquire, own and administer property by religious institutions is subject to the regulatory power of the State.
SINGLE CITIZENSHIP: Though the Constitution of India is federal and provides for dual polity i.e., Centre and States, but it provides for a single citizenship for the whole of India. The American Constitution provides for dual citizenship i.e., the citizen of America and a state citizenship. On the other hand, there is only one citizenship in India i.e., the citizenship of India. There is no State citizenship. Every Indian is the citizen of India and enjoys the same rights of citizenship no matter in what State he resides.

FUNDAMENTAL DUTIES: The Constitution (42 Amendment Act 1976) has introduced a code of ten 'Fundamental Duties' for citizens. The fundamental duties are indeed to serve as a constant reminders to every citizen that while the Constitution has specially conferred on them certain fundamental rights, it also requires the citizens to observe certain basic norms of democratic conduct and democratic behaviours.

THE NATURE OF THE INDIAN CONSTITUTION: According to the traditional classification followed by the political scientists, Constitutions are either unitary or
federal. In an unitary constitution the powers of Government are centralised in one Government viz., the Central Government. The provinces are subordinate to the Centre. In a federal Constitution, on the other hand, there is a division of powers between the Centre and State Governments and both are independent in their own spheres.

There is a difference of opinion among the Constitutional jurists about the nature of the Indian Constitution. One opinion is that it is a quasi-federal Constitution and contains more unitary features than federal. The other opinion is that it is a federal Constitution with a novel feature of adopting itself to national emergencies. The view of the framers of the Constitution is that the Indian Constitution is a Federal Constitution. Dr. Ambedkar the Chairman of the Drafting Committee, observed thus "I think it is agreed that our Constitution notwithstanding the many provisions which are contained in it where by the Centre has been given powers to override the Provinces (States) nonetheless, is a federal constitution. But some constitutional jurists hesitate to
characterise the Indian Constitution as federal.

By the federal principles, Prof. Wherse observes, "is meant the method of dividing powers, so that the general and regional governments are within a sphere to co-ordinate and be independent. Both the federal and regional governments are to co-ordinate and be independent in their spheres and not subordinate to one another".

The American Constitution is universally regarded as as an example of federal Constitution. It establishes dual polity or dual form of Government, i.e., the Federal and State Governments. The powers of both the Central and State governments are divided and both are independent in their own spheres. The existence of co-ordination of authorities independent of each other is the gist of the federal principles.

ESSENTIAL CHARACTERISTICS OF A FEDERAL CONSTITUTION:

A federal constitution usually has the following essential characteristics.

a) DISTRIBUTION OF POWERS: The distribution of powers
is an essential feature of federalism. Federalism means the distribution of powers of the State among a number of co-ordinate bodies each originating in and controlled by the Constitution. The basis of such distribution of powers is that in matters of national importance, in which a uniform policy is desirable in the interests of the units, authority is entrusted to the union and matters of local concern remain with the States.

b) SUPREMACY OF CONSTITUTION: A federal state derives its existence from the Constitution, first as a corporation derives its existence from the grant by which it is created. Hence, every power, executive, legislative or judicial whether it belongs to the nation or to the individual State is subordinate to and controlled by the Constitution. The Constitution in a Federal State constitutes the supreme law of the land. Prof. Wheare says, "that those two institutions the supreme constitution and the written constitution are then, essential institutions to a federal Government. The supreme constitution is essential if
government is to be federal, the written constitution is essential if federal Government is to work well.

c) A WRITTEN CONSTITUTION: A federal constitution must almost necessarily be a written constitution. The foundations of a federal State are complicated contracts. It will be practically impossible to maintain the supremacy of the Constitution, unless the terms of the Constitution have been reduced into writing. To base an arrangement of this kind upon understandings or conventions would be certain to generate misunderstandings and disagreements.

d) RIGIDITY: A natural corollary of a written constitution is its rigidity. A constitution which is the supreme law of the land must also be rigid. In a rigid constitution the procedure of amendment is very complicated and difficult. This does not mean that the Constitution should be legally unalterable. It simply mean that the power of amending the Constitution should not remain exclusively with either the Central or state governments. A Constitution of a country is considered to be a permanent document. It is supreme
law of the land. This supremacy of the Constitution can only be maintained if the method of amendment is rigid.

e) AUTHORITY OF COURTS: In a federal State the legal supremacy of the Constitution is essential for the existence of the federal system. The very nature of a federal state involves in a division of powers between the Centre and the State governments under the framework of the Constitution. It is, therefore, essential to maintain this division of powers between the two levels of Governments. The judiciary as in a federal polity, has the final power to interpret the Constitution and guard the entrenched provisions of the Constitution.

The Indian Constitution possesses all the essential characteristics of a federal Constitution mentioned above. The Constitution establishes a duel polity, a system of double government with the Central government at one level and the State Government at the other. There is division of powers between the Central and State Governments. Each level of Government
is supreme in its own sphere. The Constitution of India is written and is supreme. The provisions of the Constitution which are concerned with federal principle can not be altered without the consent of the majority of the States. The Constitution establishes a supreme court to decide disputes between the Union and the States, or the States interse interpret finally the provisions of the Constitution.

**Actual Position**: But, as stated earlier, some scholars hesitate to characterise the Indian Constitution as truly federal, because according to them in certain circumstances the Constitution empower the Centre to interfere in the State matters and thus places the States in a subordinate position which violates the federal principles. They, therefore, use such expressions for it as 'quasifederal', unitary with federal features' or 'federal with unitary features'. In the opinion of Prof. Wherse "The constitution entrushes a system of government which is almost quasi-federal a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features".
Jennings has characterised it as 'a federalism with a strong centralising tendency.'

The following are the provisions of the Constitution which are produced in support of the above argument and how they modify the strict application of the federal principle.

1. **APPOINTMENT OF GOVERNORS**: The Governors of the States in the country are appointed by the President (Art. 155-156) and they are in turn answerable to him. This is, however, not a matter of much significance, for the Governor is the only Constitutional Head of the State who shall normally act on the advice of his ministers. There are provisions in the constitution under which the Governor is required to send certain State laws for the assent of the President. The President has power to Veto those State laws e.g. Art. 200, 288(2). But whatever be the letter of the Constitution in practice there are not many examples where the President has vetoed the State laws. The only example has been the Kerala Education Bill. But here also the Centre obtained the advisory opinion
of the Supreme Court before sending it back to the State Legislature for suitable amendments in the light of the court's opinion.

2. **PRESIDENT'S POWER TO LEGISLATE IN THE NATIONAL INTEREST**

Under Art. 249 Parliament is empowered to make laws with respect to every matter enumerated in the State List if the Rajya Sabha passes a resolution by 2/3 majority that it is necessary in the national interest. There cannot be any objection to the provision. First, no one will deny that if a subject in the State List assumes national character, Parliament should make a law on it. In normal course this cannot be done unless the Constitution is amended. But in this provision we have devised our expedient way of which without formally amending the Constitution we can achieve the desired effect, namely, the acquisition by the Centre of the power to administer and legislate upon a subject which has assumed national importance. Secondly, it should also be noted that this power is given to parliament by Council of States itself by
passing a resolution supported by 2/3 majority of the members present. Thus, in effect by this device the Constitution is amended by the agreement of majority of the States. We, therefore fail to understand how Art. 249 places the State in subordinate position.

3) **PARLIAMENT'S POWER TO FORM NEW STATES AND ALTER BOUNDARIES OF EXISTING STATES**

The Parliament in India may form new States, increase or diminish the area of any State, and it may alter the boundaries or name of any State (Art. 3). The very existence of the States thus depends upon the sweet will of the Union Government. The power conferred on Parliament to make territorial adjustment is better explained on the historical basis. The Government of India, for the first time, established federal polity in India. It deliberately created the constituent units of the federation although they had no organic roots in the past. The framers of the constitution were well aware of the peculiar conditions under which and the reasons for which the States were formed and their boundaries were defined and thus they deliberately accepted the provisions of Art. 3 to take into
account the fact that the Constitution contemplated readjustment of the territories of constituent States which might arise in future.

4) **EMERGENCY PROVISIONS**

The Constitution envisages three types of emergencies:

- emergency caused by war or external aggression or armed rebellion (Art. 352)
- emergency caused by failure of constitutional machinery in States (Art. 356) and
- financial emergency (Art. 360).

When the proclamation of emergency is made under Art. 352, the normal distribution of powers between the Centre and States undergo a vital change. Parliament is empowered to make laws with respect to any matter enumerated in the State List. The Centre is empowered to give directions to any state as manner in which the states executive power is to be exercised. Further, the President may by order direct that all or any of the Provisions of Art. 278 and 279 relating to distribution of revenue between the Centre and the
State shall take effect with such exception of modifications, as he thinks fit Under Art. 356 if the President is satisfied that the Government of a State cannot be carried on in accordance with the provisions of the Constitution he can dismiss the State ministry and dissolve the Legislature and assume all the functions of the State. Thus the normal distribution of powers between the Centre and States, which is the basic element of a federal constitution, is completely suspended.

It is alleged that these provisions enable the union parliament to convert the union into a unitary State which vitally affects the federal character of the Indian Constitution.

Does these provisions modify the federal character of the Indian Constitution? "The correct view, as observed by Dr. V. N. Shukla, "is that emergency provisions which come into operation only on the happening of the specific contingencies, do not modify or destroy the federal system. It is rather a merit of the Constitution that it visualises the contingencies when the strict application of the federal principle might
destroy the basic assumption on which our Constitution is built. The Constitution by adopting itself to a changed circumstances strengthens government in its endeavour to overcome the crisis. In an emergency the behaviour of each federal Constitution is very much different from that in peace time. Though the Constitution of United States of America, Australia and Canada do not expressly provide for enlargement of federal power during the periods of emergency, but during the two world wars, the defence power of the federal government was given to extend an interpretation by the courts that these countries behaved more like unitary than federal State. For the above reasons we maintain that the Indian Constitution is federal in nature. Prof. Wherse has coined a phrase 'quasi-federation' as applicable to India but he has no where defined what a 'quasi-federalism' is. It is not necessary to use such a vague term 'quasi-federal' to characterise it. The term quasi-federal is extremely vague as it does not denote how powerful the Centre is, how much deviation there is from the pure 'federal model' or what kind of special position a particular
quasi-federation occupies between a unitary state and a federation. The fundamental principle of federation is that the powers are distributed between the Centre and the States and that is done by the Constitution. That is what the Constitution does. The States do not depend upon the Centre for, in normal times and the Centre cannot intrude. It may be the reason that the Centre has been assigned a larger role than the States but that by itself does not detract from the federal nature of the Constitution, for it is not the essence of the federalism to say that only so much and more power, is to be given to the Centre.  

To accept the same pattern of federalism in all countries is well nigh impossible. With all respects to Prof. Wherse, we may tell him that federalism varies from place to place, and from time to time depending on so many factors - historical, geographical, economical and political. So what is good for America is not necessarily good for India. The people of a country can take in only the required, otherwise they may stunt or destroy their growth, Federalism is not like the set
pattern of coats to wear. It is a clock of varying organised pattern befitting each wearer and helping him to the next and superior stages of federalism. India's federalism is unique and good for itself. America's federalism is not perfect as it is stated to be. It has got its own drawbacks. Indian Constitution is sufficiently federal. It is not less federal than American federalism which on paper is of higher degree but in the actual practice the leaning is towards centralisation of national interest. The term 'quasi' is a misnomer, India is federal and America is more federal in the outline of the constitution. In practice there is not much difference between these two.24

It may be noted that we devoited in respect of certain matters from the strict federalism as operating in the USA or Switzerland, but the reasons are obvious. The Indian Constitution makers defined the Indian federal structure not with an eye on theoretical but on practical constitutions in designing federalism. Under the impact of world wars, international crisis, Scientific and technological progress
and developments and the emergence of the ideal of social welfare state, the whole concept of federalism had been undergoing a change for sometime throughout the world. There are centralising tendencies in evidence in every federation and whether it is the USA or in Australia, strong and powerful national governments have emerged in every federation. The framers of the Indian constitution took note of these tendencies and kept in view the practical needs of the country designed on federal structure not on the feeling that it should conform to some theoretical, definite or standard pattern, but on the basis that it should be able to subserve the need of the vast and diverse country like India. The Indian constitution is therefore, constitutes a new bold experiment in the area of federalism.

In short, it may be concluded that the Constitution of India is neither purely federal nor purely unitary but is a combination of both. It is a union of composite state of novel type. It enshrines the principle that in spite of federalism, the
national interest ought to be permanent. Thus the Indian constitution is mainly federal with unique safeguards for enforcing national unity and growth.

**PRESIDENT'S RULE-HISTORICAL BACKGROUND**

India is a 'Union' of States. Though we have federal type of Government, the framers of the Indian constitution thought it proper to put the word 'Union' instead of Federation in the Constitution. It is the intentions of the framers of the constitution to keep the central Government strong. The present position of the States in the constitution explains the dependence of States upon the Union Government in many spheres even in normal times and much more so, during periods of emergency.25

The Government of India Act, of 1935 contained section 93 which empowered the Governor to dismiss the popularly elected government and takeover the administration of the province. Before the enactment of the Government of India Act, 1935, India was unitarily governed and as such a need to provide for the takeover of provincial government did not arise.
Section 93 of the Government of India Act, 1935 provided thus:

**Power of Governor to issue proclamations** -

1) If at any time the Governor of a province is satisfied that a situation has arisen in which the government of the province cannot be carried on in accordance with the provisions of this Act, he may by proclamation:

a) declare that his functions shall, to such an extent as may be specified in the proclamation, be exercised by him in his discretion.

b) assume to himself all or any of the powers vested in or exercisable by any provincial body or authority and any such proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the proclamation including provisions for suspending in whole or in part of the operation of any provisions of this Act relating to any provincial body or authority.....

It did not take the central government long
to invoke section 93 of the Government of India Act, 1935. Shortly after the commencement of the second world war, the Congress governments in seven out of the eleven provinces resigned: and except in Assam and North-West Frontier Province (NWFP) no other ministries could be formed in them. These were - Bombay, Madras the United Provinces, Bihar and the Central Provinces. In these was proclaimed section 93, and such provinces came to be known as 'section 93 provinces'.

Lord Wavel\(^{27}\) - the Viceroy of India was even in favour of introducing this section in Bengal, stricken as it was by famine, but was virtually overruled by the Home Government. Bengal came under it in March 1945 and Punjab in March 1947.

**CONSTITUTION MAKING AND PRESIDENT'S RULE:**

History has the uncanny knack of often thrusting on people and institutions roles of which they were at one time outspoken critics. Section 93 of the Constitution of India Act, 1935, had constituted during period of the British Raj, the proverbial note in Nationalist India's eyes conferring as it did drastic powers on the Governor of the Province. When
however the nationalist leaders into whose heads the power of governance of India passed in 1947, began framing the constitution of free India, they took a leaf out of the Government of India Act 1935, and became votaries of the once-condemned provision.

The draft constitution, prepared by the Drafting Committee of the constituent Assembly of India, contained Article 188 which empowered the Governor to proclaim the taking-over of the State Government. Such a proclamation was to have the maximum validity of two weeks.

Such was the original provision made in the Draft Constitution. It, however, underwent three important changes in the course of the debates in the Constituent Assembly. Article 188 was completely deleted, thereby empowering the President alone to assume the functions of the State Government in the events of a breakdown of the constitutional machinery there. Vallabhai Patel observed:

'The committee (to report on the principles of a Model Provincial Constitution) in settling this
question, intended to convey that the Governor shall have only authority to report to the Union President about the grave menace to the peace of the province. It was not their intention that this power of authority is to be exercised by the Governor which may perhaps bring a conflict between the Ministry and the Governor. The Governor having no control over the (public) services, the authority of administration entirely vests in the ministry and, therefore there was considerable difference of opinion on this questions on account of the prevailing conditions in the country. Some thought that it would be advisable under the present peculiar unsettled conditions in the country to give some limited powers to the Governor.... eventually the Committee came to the conclusion that it would be unworkable that it would create deadlocks and, therefore, the proper course, would be to limit his powers to the extent of authorising him to report to the President of the Union.29

The Constituent Assembly discovered the two-phase intervention in the state sphere, first by the Governor on his own and later by the President to be plainly anagolous? First if the President was ultimately to swing himself into the state field it would be more logical that he came into it at the very beginning. Second, the President may issue the proclamation of take-over on the basis of a report by the Governor or on his own initiative. This marks a departure from the earlier stipulation under which
the President could not act except on a report by the Governor duly preceded by the Governor's proclamation under Art 188. The original provision of the Governor's report being obligatory for the invocation of the President's Rule was made flexible or rather optional. If the Centre is responsible for protecting the constitutional machinery of the States, as is the acknowledged position under the constitution, why make the Presidential action absolutely dependent on the Governor's report? Finally the functions of the State Legislature were according to the provisions of the Draft Constitution to be assumed by the Parliament which was not explicitly authorised to confer such power on the President. No such bar on the part of Parliament operates now.

Though an extraordinary feature in a federal constitution, the provision seeking dismissal of State Government by Presidential action gained acceptance in the Constituent Assembly with surprising ease, in a way, this was a reflection of times, the Nation was at this time passing through a critical period in her history in the wake of partition, communal riots and
other disturbances. The constituent Assembly itself, which originally contemplated a rather weak federal government, ultimately became the champion of a powerful Centre. Article 278 (which later became Article 356) was but one manifestation of the prevalent national sentiments. In addition to B.R. Ambedkar, the Law Minister, 14 other members participated in the debate. Among them, H.V. Kamath, Shibban Lall Saxena and P.S. Deshmukh had misgivings about this provision but nonetheless did not press hard their opposition to it. It was Hriday Nath Kumzru who strongly protested against the acceptance of this Article. He observed:

'If the Central Government and Parliament are given the power that Article 277, 278 and 278A read together propose to confer on them, there is a serious danger that whenever there is dissatisfaction in a province with its government; appeals will be made to the central government to come to its rescue. The provincial electors will be able to throw their responsibility on the shoulders of the Central Government. Is it right that such a tendency should be encouraged? Responsible government is the most difficult form of government. It required patience and it requires the courage to take risks. If we have neither the patience nor the courage that is needed, our constitution will virtually be still-born. I think therefore sir, that the articles that we are discussing are not needed.
Notwithstanding the protest of H.N. Kunzru, Article 278 (which on renumbering became Article 356) was endorsed by the Constituent Assembly. Its provisions are far-reaching in their intent and implications. Under the constitution, the Central Government has assumed the ultimate responsibility of assuring constitutional government in the state. If the President (which in practice means Central Cabinet) is satisfied on the report of a Governor or otherwise that there has occurred a constitutional breakdown in a state, he may assume any or all the functions of the State Government and declare the powers the powers of the State Legislature exercisable by or under the authority of the Parliament. However, he can not assume any of the functions of the High Court or modify any provisions of the constitution relating to the High Court. Finally, the duration of President's rule in a State has the outer limit of three continuous years.

Another significant Article is 357 which describes the manner of exercise of the legislative
powers. During the Presidential Rule in a State the powers of its legislature became exercisable by or under the authority of Parliament. The latter may confer on the President the power of the State Legislature to make laws and even authorise him to delegate this power to any other authority. The President may also authorise, when the Lok Sabha is not in session, expenditure from the Consolidated Fund of the State pending its parliamentary sanction.

In short, the Article which finally emerged out of the Constituent Assembly reads as follows:

1) If the President, on receipt of a report from the Governor of a state or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this constitution, the President may by proclamation:

a) assume to himself or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the
Governor, as the case may be or anybody or authority in the State other than the Legislature of the State.

b) declare that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament.

c) make such incidental and consequential provisions as appears to the President to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any provisions of this constitution relating to anybody or authority in the State.

Providing that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exerciable by a High Court, or to suspend in whole or in part the operation of any provision of this constitution relating to High Courts.

2) Any such proclamation may be revoked or varied by a subsequent proclamation.
3) Every proclamation under this Article shall be laid before each House of Parliament and shall, except where it is a proclamation revoking a previous proclamation, cease to operate at the expiration of that period it has been approved by resolution of both Houses of Parliament.

4) A proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of passing of the second of the resolutions approving the proclamation.

Provided that if and so often as a resolution approving the continuance in force such a proclamation is passed by both Houses of Parliament, the proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have caused to operate, but no such proclamation shall in any case remain in force for more than three years.

Provided further that if the dissolution of the House of the People takes place during any such
period of six months and a resolution approving the continuance in force of such proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such proclamation has been passed by the House of the People during the said period, the proclamation shall cease to operate at the expiration of the 30 days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of 30 days a resolution approving the continuance in force of the proclamation has been also passed by the House of the People.

One must take note of two points including one which is purely terminological relating to this Article. Article 356 did not apply to Jammu and Kashmir till 20 December 1964 although it is one of the states of India Union. Secondly, the words 'House of the People' and 'Council of States' have since been substituted by 'Lok Sabha' and 'Rajya Sabha' respectively and the words 'Governor' or 'Rajapramukh' as the case may be have since been deleted having became meaningless in the course of time.
It is to be noted that the Constitution does not provide for President's Rule at the Centre. The President is always a Constitutional Head and even when a Ministry falls he has to go or invite political parties to form the Government or to order a mid-term poll. The reason for not incorporating provision for Presidential takeover of the Central Government cannot be that instability in a State should cause the country wider concern than instability at the centre. This truly a recognition of the constitution's faith in the political parties of the land and ultimately in the electorate.

The dissolution of a State Assembly in India may be effected in two ways. The Governor himself may dissolve the Assembly - a power which he enjoys in the Constitution. This right which he invokes on the advice of the Chief Minister has been exercised under two circumstances. The Governor as a rule, dissolves the Assembly when in the normal process fresh
elections to it are to be held, and in all such cases the popular ministry remains in power — though on a somewhat caretaker basis. Also, he has terminated the life of the Assembly on a few occasions of Legislative turmoil (Punjab under Pavate, West Bengal under Dhavan, Kerala under Viswanathan) again the ministry continuing in office.

The second set of circumstances has in practice, been the prelude to the President's rule in the state. What is more, in such situations president's rule may even turn out to be a constitutional inevitability. If the Assembly did not pass the budget before its dissolution, state administration may come to a complete standstill unless the budget is passed by the Parliament. Which derives this necessary authority only when Article 356 has been imposed on the states. It needs to be noted that while the legislative Assembly may be dissolved or suspended under President's Rule, the upper house, where it exists, remains intact.
IMPOSITION OF PRESIDENT'S RULE IN UNION TERRITORIES:

The local democracy in a Union Territory rests absolutely on the sufferance of the Centre. Section 51 of the Government of Union Territories Act, 1963 clearly provides:

If the President, on receipt of a Report from the administration of a Union Territory or otherwise, is satisfied:

a) that a situation has arisen in which the administration of a union territory cannot be carried on in accordance with the provisions of this act, or

b) that for the proper administration of the Union Territory it is necessary or expedient so to do, the President may, by order suspend the operation of all or any of the provisions of this act for such period as he thinks fit and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the Union Territories in accordance with the provisions of Article 239.
The Union Territories are designed to be centrally administered and the enforcement of Section 51 does not bring about any basic change in the administrative structure and its functioning in a Union Territory. Hence, it is not proposed to discuss, in the present work, President's rule in the Union Territories.

THE PRESENT POSITION OF THE STATES IN THE CONSTITUTION:

The States have been made dependent upon the Central Government in many spheres even in normal times and, much more so during periods of emergency. The following Articles will definitely explain the status or position of States in the federal setup underlined in the Constitution.

Article 249 of the Indian Constitution authorises the Parliament to enact legislation on any subject on the State List provided the Rajya Sabha, by a 2/3 majority, empowers it to do so.

Under Article 312, Parliament is empowered to create new All India Services common to the Centre
and States provided again, the Rajya Sabha passes a resolution to this effect by a 2/3 majority.

Article 256, places a State Government under an obligation to so exercise its executive power as to ensure compliance with the laws made by Parliament and to this and the Centre is empowered to issue necessary directions to it.

Article 257, places the states under the control of the Central Government in certain cases. It says:

1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive of the executive power of the Union, and the executive power of the union shall extend to the giving of such directions to a State as may appear to the government of India to be necessary for that purpose.

2) The Executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means
and communicating declared in the direction to be of national or military importance.

3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

Article 200 & 201 empower the Governor - who is the President's appointee - to reserve a bill passed by the State Legislative Assembly for the consideration of the President who has a right to Veto it.

Finally, an unusual feature of the Indian federalism is that even the very identity of States has not been protected. Article 3 of the Constitution provides that the Parliament may by law:

a) form a new State
b) increase the area of any State
c) diminish the area of any State
d) alter the name of any State.

And, as Article 4 confirms such a law, is
not to be construed as an amendment of the Constitution. It is notable that the Central Government has made ample use of the provision contained in Article 3.

The Constitution even provides for the dismissal of a popularly elected ministry in a State by the President. The suspension of the constitutional provision relating to a responsible government in the State is by all accounts an extraordinary feature which is not to be found in any other federal constitution except that of Pakistan. This unusual constitutional feature and its invocation constitute the theme of the present work.

AN OVER VIEW:

One of the important characteristic features of Indian Constitution as framed by the drafting committee is federalism with strong centralising tendency. Care has been taken to safeguard the fundamental rights of the people in the country at all times through the institution of Supreme Court. The constitutional provisions inorder to maintain unity and integrity of the nation even at grave situation empowered the
Centre to its unique office of 'President of India' to impose the Centres Rule also called as 'President's Rule' through declaration of emergency for the whole of the country or States or part of the country.

Generally the emergencies are caused by War or external aggression or armed rebellion, failure of constitutional machinery in States and financial breakdown. As a result of emergency rule the States generally have to depend on the Central Government in many spheres. Thus it is the President who emerges as the practical executive to exercise his theoretical powers more practically and steels the show and manages the Governmental business of the country. The role and position of the President are so significant in the country during the emergency times as discussed in the foregoing chapter.
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4) Brycle, J., Studies in History and Jurisprudence, Essay, II


9) Sachdev and Dua, Indian Administration, New Delhi: Ajantha Prakasam, 1983, p.5.


11) Venkatarangaiya, The case for a constituent Assembly of India, p.38.


15) Added by the 42 Amendment Act, 1976.


24) Ramachandran, V.J., 1958 (SCJ) p. 79.

26) Section 93 of 1935 Act.

27) In this connection Lord Wavel write 'It is against my principles to take over from an Indian Government when they are in difficulties, they will never learn to rule themselves if they are not compelled to face their responsibilities and difficulties. But this Government has been a good run and too much is at stake. Pendrel Moon (Ed.) Wavell: The Viceroy's Journal (London: Oxford University Press, 1973), p. 47.

28) Ibid., p. 48.


32) Ibid., p. 10.
33) Article 174 of the Constitution.

34) Article 357 (e) of the constitution.