A federal structure has been provided in India under the new constitution. In a federal system of government, “the totality of governmental power is divided and distributed by the national constitution or the organic act of Parliament creating it, between central government and the government of the individual states or other territorial sub-divisions of which the federation is composed.” \(^1\) In other words, federalism implies a dual polity in which the powers are distributed between the union and the states and both are autonomous within their respective spheres. Usually all matters of common national interests are left with the central government, while matters of local importance are entrusted to the state government. As both the union and the state governments draw their authority from the same source viz., the constitution, and none of them is subordinate to the other.

The framers of the constitution did not describe India as a ‘federation’. Instead they preferred to use the word ‘Union of States’. Explaining the reasons for this deviation, Dr. B. R. Ambedkar said: “Nothing much turns on the name, but the committee has preferred to follow the language of the preamble to the British North American Act of 1867, and considered that there are advantages in describing India as a union, although its constitution may be federal in character.” \(^2\) He further pointed out that the use of term union of states is indicative of two things, the Indian federation is not the result of an agreement by the units (like the American federation) and the units have no right to secede from the federation.
Dr. Ambedkar said, "The chief mark of federalism.............lies in the partition of the legislative and executive authority between the centre and the units by the constitution. This is the principle embodied in our constitution." The above statement shows that the founding fathers have adopted the federal idea in the Indian constitution. The federal idea, however, was not incorporated for the first time by the founding fathers in our constitution. As A. Krishnaswami felicitously observes, "In the physiognomy of the constitution of India, which came into force on the 26th of January 1950, are traceable lineaments of the government of India Act 1935 and its predecessors."4

The federal idea in India does not however follow the orthodox pattern of federalism represented by the United States constitution or the Australian constitution. For a vast country like India having different languages, dialects and cultures, federation was the only royal road. The federal idea in India tries to strike a balance between the centripetal idea of unity and integrity of the nation and the centrifugal idea of linguistic and cultural diversity of regions. As early as 1931, Sobei Mogi, a celebrated authority on federalism, observed, "The existing conditions of India, which are the consequences of divergences in her social and state structure .......demand solution by means of the federal device. Though no other solution of these problems can be nearly so effective as the federalist one, yet historical federal experience has already taught the application of orthodox federalism cannot bring about a really satisfactory solution unless the basis of federalism is reconstructed."5

It is also interesting to note that federalism as a political device has been used for different purposes in different epoch of history. In the 19th century federalism was used to abet ethnic nationalism, in the 20th century it has been used as a means to unify multi-ethnic notions.6 In nations outside the
totalitarian orbit, such as India and Malaysia, federalism has been used to secure political and cultural rights for the larger ethno-linguistic people.7

In the constituent Assembly of India, the federal form of government was as good as taken for granted. The union powers committee observed that the unitary form of government would be a “retrograde step” because “......centralisation produces apoplexy at the centre and anemia at the circumference.”9 A similar note was struck by Sir Alladi Krishnaswami Aiyyar when he observed that, “the problem of the constitution makers, in devising the federal structure of the Indian Republic was to balance the forces of unity with those of diversity.”10

Looking into the pages of Indian constitutional history, one finds that the proponents of the federal idea were the Britishers, the princely states, the Indian National Congress and the Muslims. Each one of them, however, thought of the federal device to suit their own ends. The Britishers advocated the federal device to placate the Indians so as to avoid the demand for dominion status. The Britishers combined the elements of democracy and autocracy in the fold of federalism. The princely states wanted federalism to safeguard their position vis-a-vis the crown and also to thwart the democratic aspirations of the nationalists. The Indian National Congress wanted federalism to achieve the unity and integrity of the country. The muslims wanted federalism so as to share power in the muslim majority areas. Thus, the concept of federalism suited with the aspirations of all of them. However, the type of federalism envisaged under the Act of 1935 was rejected by the princely states, the muslims and the Indian National Congress. In the result, a heavy burden fell on the founding fathers to devise a federal system that would reconcile the demands of various political interests. Carl J. Friedrich observes, “Altogether
India's federal system is probably the most complex ever devised by the mind of man.\textsuperscript{11}

THE EVOLUTION OF FEDERAL IDEA IN INDIA:

It was John Bright who first suggested as far back as 1858, that the Government of India should be constituted on a federal basis.

The demand for federation was raised by the Hindoo patriot, which wrote on 28\textsuperscript{th} January 1860:

"The appointment of the assets and liabilities of the Indian government among the different provinces which make up the British Indian empire each according to its needs and capacities is the first condition of their improvement...Each Indian governorship, whatever its means and whatever its responsibilities, for the free employment of the one, nor seeks to repudiate the other. What then can stand in the way of the federation of these discordant elements of an otherwise strong empire\textsuperscript{12}"

The idea was not welcomed because it was an American and not an English idea.\textsuperscript{13}

From the Indian Councils Act of 1861, which started a process of decentralization in the governance of British-India to the constitution of India which adopted in 1950 a kind of co-operative federalism, the development had been gradual and steady combining the principles of unification and decentralization in the constitutional system and institutions. What prompted the beginning of decentralization in 1861 was the realization on the part of the alien rulers of the unsuitability of centralized administration for a plural society; and what led to the adoption of a 'strong centre' by the constituent assembly in 1947 was the need felt by the leaders of free India to safeguard the
unity of the country threatened by several divisive forces. In the course of 40
years since independence the 'strong centre' has become further strengthened
correspondingly weakening the 'autonomy' of the state's legislative and
executive.

PRE-1935 ACTS AND FEDERALISM IN THE EMBRYONIC STAGE:

The federal idea in the liberal sense seems to have started from the
Indian Councils Act, 1861, Section 43 of that Act laid down that in certain
matters e.g. public debt of India, current coin, notes and paper currency, the
Governor in the council could not pass any law without the previous
permission of the Governor general. In other words, in the aforesaid matters,
the legislative power of the provinces was subjected to the power of the
Governor General. Similarly, clause (3) of section 80A of the provincial
legislature. Of course, in the physiognomy of the Government of India Act
1935 are traceable lineaments of the devolution rules made under the
Government of India Act 1914-19.14 Strictly speaking, these provisions did not
bring full fledged federalism in India but birth pangs of federalism could be
seen in those provisions.

BRITISH GOVERNMENT AND THE IDEA OF FEDERALISM:

The Montagu-Chelmsford Report observed interalia "Granted the
announcement of August 20th 1919, we cannot at the present time envisage its
complete fulfillment in any form other than that of a congeries of self
governing Indian provinces associated for certain purposes under a responsible
government of India; with possibly what are now the native states of India
finally embodied in the same whole, in some relation which we will not now
attempt to define. For such an organization the english language has no word
but federal."15
The above observations of the Mont-Ford Report became a launching pad for the future federation of India. The Simon Commission observed, "The ultimate constitution of India must be federal, for it is only in a federal constitution that units differing so widely in constitution as the provinces and the states can be brought together while retaining internal autonomy."\(^{16}\)

The modalities of the proposed federation were spelt out by the Simon commission. The commission suggested that dyarchy at the provincial level should be abolished. To form the nucleus of the new federal structure, the commission suggested that, "each province should be as far as possible mistress in her own house."\(^{17}\)

To achieve the unity of greater India the commission made a novel suggestion which prompted the interest of Britishers as well as that of the princely states. It said, "The union of constituents such as the Indian states with the provinces of India, the former autocratic and the latter democratic, necessarily involves giving the greatest possible internal freedom to the federal units. It is, we think, abundantly clear that it is only on such terms that there could be hope of achieving the unity of Greater India."\(^{18}\)

The Nehru committee headed by Motilal Nehru sharply reacted to the induction of Princely states in the federation plan: "It would be in our opinion, a most one-sided arrangement if the Indian states desire to join the federation so as to influence, by their votes and otherwise, the policy and legislation of the Indian legislature without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea."\(^{19}\)

The prime cause which propelled the princely states to join the federation scheme lay in the Butler Committee Report. The excessive
importance laid on the principle of paramountcy by the Butler committee raised serious apprehension in the minds of Princely states.

Paramountcy must remain paramount and paramountcy alone can make the states rely for their preservation through the generation that are to come.²⁰

To stem the tide of democratic aspirations of the people, the Simon Commission provided provincial autonomy along with the federation. At the same time, the commission frustrated the federal idea by inducting the autocratic element in it. The commission pronounced the obituary to the idea of federalism by providing indirect election at the central legislature.

CONSTITUENT ASSEMBLY AND THE IDEA OF FEDERALISM:

Following the footsteps of the cabinet mission plan, the Objectives Resolution, introduced in the Assembly on 13th December 1946, provided that the territories comprising British India, Indian states and other territories.... “Shall possess and retain the status of autonomous units, together with residuary powers and exercise all powers and functions of government and administration, save and except such power and functions as are vested in or assigned to the union.”²¹

The resolution shows that the idea of federalism with a strong centre received a great set back. The Muslim league abstained from the session of the Assembly.²² Eventhough the centre was vested with the powers of defence, foreign affairs and communications and the power to raise necessary revenue required for the above subjects, the union powers committee stretched the concept of defence, foreign affairs and communications and included several entries of the federal legislative list of the Government of India Act 1935, within the legislative power of the centre.²³
On declaration of the partition on June 3, 1947, the idea of federalism with a strong centre which received temporary setback was revived. On June 6, 1947, the union constitution committee, headed by Jawaharlal Nehru, arrived at the following tentative decisions:

1. That the constitution should be a federal structure with a strong centre.

2. That there should be three exhaustive legislative lists…… with residuary powers for the centre; and

3. That the Indian states should be on par with the provinces as regards the federal legislative list.24

The above decisions were approved by the joint meeting of the union constitution committee and the provincial constitution committee held on 7-6-1947.25 The provincial constitution committee was headed by Sardar Patel. Thus the idea of federation with a strong centre had the backing of two political stalwarts.

The idea of federation with a strong centre received its emphatic expression in the second report of the union powers committee dated 5th July 1947. The committee observed:

The severe limitations on the scope of central authority in the Cabinet Mission’s Plan was a compromise accepted by the assembly much, we think, against its judgement of the administrative needs of the country in order to accommodate the Muslim league. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace of co-ordinating vital matters of common concern and of speaking effectively for this whole country in the international sphere.....to
frame a constitution on the basis of a unitary state would be a retrograde step..... soundest framework of our constitution is a federation with a strong centre.\textsuperscript{26}

The idea of federation with a strong centre received a fillip because of two notes submitted by K.M.Panikkar, a member of the union constitution committee\textsuperscript{27} and also proponent of unitary form of government. In his first note he said:

"Federation is a fair constitution and in the circumstances of India, it is likely to be a dangerous experiment leaving the national government with but limited powers, weak and consequently incapable of dealing with national problems."\textsuperscript{28}

In his second note Panikkar observed:

"If India has to face the issue of defence squarely, that is both in its peace organization, involving industrial planning, creation of national technical efficiency on a large all India scale, higher research in sciences and what is more, an integrated defence force, then a unitary central government for British India is unavoidable."\textsuperscript{29}

Dispelling the fear that the ideal of a strong centre might militate against the ideal of federalism, Dr. Ambedkar said:

"It may be that the constitution assigns to the centre a larger field for the operation of its legislative and executive authority than is to be found in any other federal constitution. It may be that the residuary powers are given to the centre and not to the states. But these features do not form the essence of federalism. The chief mark of federalism, as I said, lies in the partition of the legislative and executive authority between the centre and the units by the constitution. This is the principle embodied in our constitution."\textsuperscript{30}
Ultimately the idea of federalism with a strong centre prevailed. It should be noted that the idea of federalism with a strong centre was carefully nurtured and nourished by the Indian leaders. Specific mention must be made of Motilal Nehru who consistently advocated this idea. Of course, the idea of federalism with a strong centre received temporary set back in the year 1946. But on declaration of partition of India, the union constitution committee, union power committee and the provincial constitution committee revived the idea of federalism with a strong centre. Jawaharlal Nehru and Sardar Patel being in agreement with the idea of federalism with a strong centre, the idea went through whole hog. The prevailing circumstances at the time of partition of India gave a further boost to the idea of a strong centre. The partition of the nation, law and order problem, food shortages, price control and rehabilitation of refugees all favoured a strong centre with residuary powers.

Our founding fathers were not dogmatic about the federal idea. They agreed with the following observation of Sobei Mogi:

"The federal experience in political organization sprung neither from doctrinaire ideals nor from metaphysical speculation but from the actual exigencies of political experiment."

We conclude with the prophetic observation of Arthur Duncan in 1931:

"In India where the centrifugal might conceivably be stronger than the centripetal forces, it is essential to give as much power as possible to the central government to enable it to carry out its supreme function of the unification of India."
JUSTIFICATION FOR ADOPTION OF FEDERATION:

Eversince the process of enactment of the constitution started, a controversy has raged whether it was desirable for India to adopt a federal system of government. Divergent views were expressed on the floor of the Constituent Assembly on the issue. Those who were opposed to the federal system of Government in India advanced the following arguments:

1. It would encourage the establishment of small independent states within the country and give rise to the feeling of separatism.

2. There would be need of securing the approval of the various provinces on the different development programmes prepared for the country, which would involve unnecessary wastage of time. It is also possible that the provinces may not accord approval even after causing the delay.

3. Federalism would not be conducive to the general good of the common people. Under this system the various professional politicians would get a chance to exploit the system for furthering their own interests.

4. The double set of administration would mean additional financial burden to the poor people of the country, and would make the lot of the people miserable.

5. Federalism is a reactionary system of government and greatly obstructs the uniform economic development of the country. It leads to the feeling of mutual bickering amongst the various provinces and states, which is greatly harmful for the country. It also perpetuated the economic inequalities amongst the various states and encourages the demand for the constitution of states on linguistic basis.
6. The federal system is not in tune with the principles of welfare state, which aims at the planned development of the country. It is highly desirable that the country should have a strong central government so that the problems of poverty, communalism, provincialism and illiteracy may be effectively tackled.

Apart from the above arguments so many other arguments were advanced for opposing the adoption of federal system of Government of India. The members in general contended that other countries like U.S.A. and U.S.S.R. had adopted federal system because of compulsion and because they could not adopt a unitary system of government. For example, Hamilton in U.S.A. strongly favoured the adoption of a centralized federation, but could not succeed in his mission due to the opposition offered by the states to his scheme. These opponents of federalism contended that in India no such compulsive factors existed. They were so much in favour of adoption of a unitary form of government for the country that when they saw that they would not be able to prevent the establishment of federal system in the country. Finally the federal system which emerged out of the deliberations of the constituent assembly had strong unitary bias.

REASONS FOR ADOPTION OF FEDERALISM:

It is true that the political system adopted in a country is not merely the result of a choice but also dictated, by the conditions prevailing in the country. This fully applies to the Indian federal system not only due to historical reasons but also because of the numerous problems which confronted them at the time of enactment of the constitution. It would be wrong to assume that the federal system was introduced in India for the first time under the new constitution. Its foundations were laid during the British rule itself. Under the Government of
India Act 1935, a federation was envisaged for the country, but it could not come into operation because sufficient number of princely states did not join it. The constitution of India did not leave the choice with the states and introduced the system forthwith.

The chief reasons which prompted the framers of the constitution to decide in favour of federalism may be enumerated as follows:

1. Historical Reasons:

Eversince the mutiny of 1857 the constitutional development in India moved from centralization to federalism. The various laws passed since then made efforts to decentralize the authority of the central government. But the real proposals regarding the establishment of federal system of government in the country were mooted in the year 1930 at the First Round Table Conference. At this conference the representatives of almost all the major groups and political parties favoured a federal system of government. Although the congress did not participate in the First Round Table Conference, it endorsed the idea of an All India Federation during Second Round Table Conference. The federal scheme was presented in a concrete shape under the Government of India Act, 1935, although it could not come into operation due to the failure of the states to join it in sufficient numbers and the outbreak of the second world war. However, it cannot be denied that the Government of India Act, 1935 did make a beginning in the direction of provincial autonomy, a basic feature of a federation. Though the federation, envisaged under the Act of 1935, could not come into force, it exercised tremendous influence on the framers of the constitution and the federal system provided under the new constitution was to a large extent based on the Act of 1935.
2. Diversity of Indian Society:

Another factor which prompted the framers of the constitution to adopt a federal system for the country was the diversity of race, religion, language, culture etc. In view of the vastness of the country and the diversity of the Indian society the framers of the constitution realised that it would not be possible to adopt a unitary system of government in the country. They felt that only a federal polity could provide unity to the country while ensuring autonomy to the various areas in their respective spheres, so that the people of these areas may be able to conserve their own culture, language, religion etc. Under the circumstances federalism alone could ensure national unity.

3. Communal Factor:

The prevalence of the strong communal feeling in the country also compelled the framers to opt for a federal system. Even after the partition of the country on religious basis number of muslims continued to stay in India. The imposition of the unitary system in the country would have roused doubts in their mind regarding their future in the country. The adoption of federalism gave them the feeling that they could still enjoy autonomy in their restricted sphere.

4. Presence of Princely States:

After independence most of the states with the exception of Junagarh, Hyderabad and Jammu and Kashmir acceded to India. Subsequently even these three states joined India. One of the major problems which confronted the framers of the constitution was how to fit these states in the constitutional structure of the country. As these states differed a great deal from each other with regard to the economic development, standard of living and customs, the
unitary system of government could not have been acceptable to them. Under the circumstances federalism was the only answer. Even at the time of the First Round Table conference the Maharaja of Patiala had expressed the view that federalism was the only method which could help in integrating the Indian States with the British provinces and creating a greater India. In short, it can be said that in view of the variety of administrative units, existing in India which were at different levels of economic development, federalism alone was the way out.

Therefore, we can say that the federation of India was the creation of the peculiar conditions prevailing in the country at the time of the enactment of the constitution. It is true that the framers of the constitution like United States of America and Canada, which they could have blindly copied, but they preferred to evolve a federation of its own type with certain features of its own. While the Indian polity possesses most of the federal features, it also possesses certain unitary features. This accounts for the great controversy regarding the true nature of Indian federalism. To have an idea of its true nature, let us examine constitutional framework of the Indian federal system.

Further, this chapter has been divided into two sections in order to study and understand the Theory and Practice of Indian federal system.

In the first section, we shall discuss about the constitutional framework of the Indian federal system.

THE CONSTITUTIONAL FRAMEWORK OF THE INDIAN FEDERAL SYSTEM:

The federal experiment in India, preceded the making of Indian Constitution. History and Geography had always emphasised the importance of India’s regional characteristics. As a result the centralising policies initiated by
the Britishers soon encountered difficulties. A purely unitarian administrative model was unknown to Indian History prior to the advent of the British in India. No doubt, “unity in diversity” is an old theme of the political and cultural life of India. In fact it has a common cultural heritage that could, without obliterating itself, assimilate alien cultures. But a purely centralized form of administration had never been a successful reality.

In a federal system of government “the totality of governmental power is divided and distributed by the national constitution or the organic act of Parliament creating it, between central government and the governments of the individual states or other territorial sub divisions of which the federation is composed.” In other words, federalism implies a dual polity in which the powers are distributed between the union and the states and both are autonomous within their respective spheres. Usually all matters of common national interests are left with the central government, while matters of local importance are entrusted to the state government. As both the union and the state governments draw their authority from the same source, viz., the constitution, and none of them is subordinate to the other.

A federal system involves the following essential features:

i) Dual Government:

While in a unitary state, there is only one government, namely the national government, in a federal state, there are two governments, the national or federal government and the government of each component state.

Though a unitary state may create local sub-divisions, such local authorities enjoy an autonomy of their own but exercise only such powers as are from time to time delegated to them by the national government and it is
competent for the national government to revoke the delegated powers or any of them at its will.

A federal state, on the other hand, is the fusion of several states into a single state in regard to matters affecting common interests, while each component state enjoy autonomy in regard to other matters. The component states are not mere delegates or agents of the federal government, but both the federal and state governments draw their authority from the same source viz., the constitution of the land. On the other hand, a component state has no right to secede from the federation at its will. This distinguishes a federation from a confederation.

ii) Distribution of Powers:

It follows that the very object for which a federal state is formed, involves a division of authority between the federal government and the states though the method of distribution may not be alike in the federal constitutions.

iii) Supremacy of the Constitution:

A federal state derives its existence from the constitution, just as a corporation derives its existence from the grant of a statute by which it is created. Every power-executive, legislative, or judicial-whether it belongs to the federation or to the component states, is subordinate to and controlled by the constitution.

iv) Authority of Courts:

In a federal state the legal supremacy of the constitution is essential to the existence of the federal system. It is essential to maintain the division of powers not only between the co-ordinate branches of the government, but also between the federal government and the states themselves. This is secured by
vesting in the courts a final power to interpret the constitution and nullify any action on the part of the federal and the state governments or their different organs which violates the provisions of the constitution.

Not much pains need to be taken to demonstrate that the political system introduced by our constitution possesses all the aforesaid essentials of a federal polity. Thus, the constitution is the supreme organic law of our land, and both the union and the state governments as well as their respective organs derive their authority from the constitution, and it is not competent for the states to secede from the union. There is a division of legislative and administrative powers between the union and the state governments and the supreme court stands at the head of our judiciary to jealously guard this distribution of powers and to invalidate any action which violates the limitations imposed by the constitution. This jurisdiction of the supreme court may be resorted to not only by a person who has been affected by a union or state law which, according to him, has violated the constitutional distribution of powers but also by the union and the state themselves by bringing a direct action against each other, before the original jurisdiction of the supreme court under Article 131. It is because of these basic federal features that our supreme court has described the constitution as 'federal'. But though our constitution provides these essential features of a federation, it differs from the typical federal systems of the world in certain fundamental respects:

PECULIAR FEATURES OF INDIAN FEDERALISM:

A) The Mode of Formation:

A federal union of the American type is formed by a voluntary agreement between a number of sovereign and independent states, for the administration of certain affairs of general concern.
The most crucial and in a sense the most difficult problem faced in the making of the Indian federation was the determination of the nature of the federating units. Unlike countries like the U.S.A there was no traditional, cultural homogeneity or sense of community among all the erstwhile British Indian provinces. Most of them were formed for the convenience of the British administration without regard to the composition or the population. The larger Indian state, based on conquest or accession also did not provide a satisfactory basis for the formation of the units, while the smaller ones were not viable in terms of the requirements of modern government.

To appreciate the mode of formation of federation in India, we must go back to the Government of India Act, 1935 which for the first time introduced the federal concept and used the expression ‘Federation of India’ (S.5) in a constitutional Act relating to India. Since the constitution has simply continued the federal system so introduced by the Act of 1935, so far as the provinces of British India are concerned.

By the Act of 1935, the British Parliament set up a federal system in the same manner as it had done in the case of Canada, viz., “by creating autonomous units and combining them in to a federation by one and the same Act.” All powers hitherto exercised in India were resumed by the crown and redistributed between the federation and the provinces by a direct grant. Under this system, the provinces derived their authority directly from the crown and exercised legislative and executive powers, broadly free from central control, within a defined sphere. Nevertheless, the centre retained control through ‘the Governor’s special responsibilities’ and his obligation to exercise his individual judgement and discretion in certain matters, and the power of the centre to give direction to the provinces.
It is well worth remembering this peculiarity of the origin of the federal system in India. Neither before nor under the Act of 1935, the provinces were in any sense 'Sovereign' states like the states of the American Union. The constitution, too, has been framed by the 'people of India' assembled in the constituent assembly, and the union of India cannot be said to be the result of any compact or agreement between autonomous states. So far as the provinces are concerned, the progress had been from a unitary to a federal organization, but even then, this has happened not because the provinces desired to become autonomous units under a federal union, as in Canada. The provinces, as just seen, had been artificially made autonomous, within a defined sphere, by the Government of India Act, 1935. What the makers of the constitution did was to associate the Indian States with these autonomous provinces into a federal union, which the Indian states had refused to accede to, in 1935.

Some amount of homogeneity of the federating units is a condition for their desire to form a federal union. But in India, the position has been different. From the earliest times, the Indian states had a separate political entity, and there was little that was common between them and the provinces which constituted the rest of India. Even under the federal scheme of 1935 the provinces and the Indian states were treated differently. The accession of the Indian states to the system was voluntary while it was compulsory for the provinces, and the powers exercisable by the federation over the Indian states were also to be defined by the instruments of accession. It is because it was optional with the rulers of the Indian states that they refused to join the federal system of 1935. They lacked the 'federal' sentiment that is the desire to form a federal union with the rest of India. But, as already pointed out, the political situation changed with the lapse of paramountcy of the British crown as a result
of which most of the Indian states acceded to the dominion of India on the eve of the Independence of India.

The credit of the makers of the constitution, therefore lies, not as much in bringing the Indian states under the federal system but in placing them, as much as possible on the same footing as the other units of federation under the same constitution.

**NATURE OF INDIAN FEDERAL SYSTEM:**

As has been already stated, the political structure prescribed by the constitution is a federal union. The name of the union is India or Bharat under Article 1(1) and the members of this union at present are the 28 states of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttaranchal and West Bengal. Barring Jammu and Kashmir which has still a special position under the constitution, the provisions of the constitution relating to the states now apply to all these states on the same footing.

The expression ‘Union of India’ should be distinguished from the expression ‘territory of India’ while the ‘Union includes only the states which enjoy the status of being members of the federal system and share a distribution of powers with the union, the territory of India, includes the entire territory over which the sovereignty of India, for the time being extends.

Thus, beside the states, there are two other classes of territories, which are included in the ‘territory of India’, viz., (i) ‘Union territories’, and (ii) such other territories as may be acquired by India.
i) The union territories are, since 1987, seven, in number Delhi, the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman & Diu, Pondicherry and Chandigarh. The Union territories are centrally administered areas, to be governed by the President, acting through an ‘Administrator’ appointed by him, and issuing regulations for their good government according to Articles 239 to 240 of the Indian constitution.

ii) Any territory which may, at any time, be acquired by India by purchase, treaty, cession or conquest, will obviously form part of the territory of India. These will be administered by the government of India subject to legislation by Parliament under Article 246 (4) of the Indian constitution.

Indian federation empowers the union Parliament to alter the territory of its units, namely, the states, without their consent or concurrence. The makers of our constitution, therefore, empowered the union Parliament to reorganize the states by the essence of which is that the affected state or states by a simple procedure or states may express their views but cannot resist the will of Parliament.

The provisions relating to the above subjects are contained in Articles 3-4 of the constitution.

CITIZENSHIP:

The question of citizenship became particularly important at the time of the making of our constitution because the constitution sought to confer certain rights and privileges upon those who were entitled to Indian citizenship, while they were to be denied to ‘aliens’. The latter were even placed under certain disabilities.
Thus, citizens of India have the following rights under the constitution which aliens shall not have:

i) Some of the fundamental rights belong to citizens alone, such as Arts. 15, 16, 19.

ii) Only citizens are eligible for certain offices, such as those of the President (Arts. 58 (1); Vice-President (Art 66 (3) (a); Judge of the supreme court (Art. 124 (3)) or of a High Court (Art. 217 (2)) Attorney-General (Art. 76, (2)); Governor of a state (Art. 157); Advocate General (Art. 165).

iii) The right to suffrage for election to the House of the people (of the Union) and the Legislative Assembly of every state (Art. 326) and the right to become a member of Parliament (Art. 84) and of the Legislature of the state (Art. 191 (d)) are also confined to citizens.

The constitution, however, did not intend to lay down a permanent or comprehensive law relating to citizenship in India. It simply described the classes of persons who would be deemed to be the citizens of India at the date of the commencement of the constitution and left the entire law of citizenship to be regulated by some future law made by Parliament. In exercise of this power, Parliament has enacted the citizenship Act-(57 of 1955), making elaborate provisions for the acquisition and termination of citizenship subsequent to the commencement of the constitution. The provisions of this Act are to be read with the provisions of part -II of the constitution, in order to get a complete picture of the law of Indian citizenship.

It should be noted in this context, that our constitution, though federal, provides for single citizenship only, namely, the citizenship of India. In India, a
person born or resident in any state can acquire only one citizenship, namely, that of India and the civic and political rights which are conferred by the constitution upon the citizens of India can be equally claimed by any citizen of India irrespective of his birth and residence in any part of India.

It is to be noted that it is the union Parliament which would be the sole authority to legislate in this matter and that state legislatures shall have no voice.

So far as the state of Jammu and Kashmir is concerned the legislature of the state is authorised to confer special rights and privileges upon persons permanently resident in the state in respect of employment, acquisition of immovable property, settlement and right to scholarships in the state.

PROCEDURE FOR AMENDMENT:

The nature of the amending process envisaged by the makers of our constitution can be best explained by referring to the observation of Pandit Nehru that the constitution should not be so rigid that it cannot be adopted to the changing needs of national development and strength.

In the words of Dr. Ambedkar, explaining the proposals for amendment introduced by him in the Constituent Assembly.

"Those who are dissatisfied with the constitution have only to obtain a two thirds majority, and if they cannot obtain even a two-thirds majority in the Parliament elected on adult franchise in their favour, their dissatisfaction with the constitution cannot be deemed to be shared by the general public."40

The framers of our constitution were also inspired by the need for sovereignty of the Parliament elected by universal suffrage to enable it to
achieve a dynamic progress. They therefore, prescribed an easier mode for changing those provisions of the constitution which did not primarily effect the federal system. This was done in two ways.

a) By providing that the alteration of certain provisions of the constitution were ‘not to be deemed to be amendment of the constitution’. The result is that such provisions can be altered by the union Parliament in the ordinary process of legislation, that is, by a simple majority.

b) Other provisions of the constitution can be changed only by the process of ‘amendment’ which is prescribed in Article 368. But, a differentiation has been again made in the procedure for amendment according to the nature of the provisions sought to be amended.

While in all cases of amendment of the constitution, a Bill has to be passed by the union Parliament by a special majority in the case of certain provisions which affect the federal structure, a further step is required, Viz., a ratification by the legislature of at least half of the states, before the Bill is presented to the President for his assent under Article 368. But even in these latter group of cases, the law which eventually effects the amendment is a law made by the Union Parliament, which is the ordinary legislative organ of the Union Parliament. There is thus no separate constituent body provided for by our constitution for the amending process.

The procedure for amendment is -

I. An amendment of the constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority (i.e., more
than 50%) of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the constitution shall stand amended in accordance with the terms of the Bill.

II. If, however, such amendment seeks to make any change in the following provisions, namely-

a) The manner of election of the President (Arts. 54, 55);

b) Extent of the executive power of the union and the states (Articles 73, 162);

c) The supreme court and the High Courts [Arts 241, chap. IV of part V, Chap. V of part VI];

d) Distribution of legislative power between the union and the states (chap. I of part XI);

e) Any of the lists in the 7th schedule;

f) Representation of the states in Parliament (Arts. 80-81, 4th schedule);

g) Provisions of Art. 368 itself-

The amendment shall also require to be ratified by the legislature of not less than one half of the states by resolution to that effect passed by those legislatures before the Bill making provision for such amendment is presented to the President for assent under Article 368 (2).

It is clear from the above that the amending process prescribed by our constitution has certain distinctive features as compared with the corresponding
provisions in the leading constitutions of the world. The procedure for amendment must be classed as 'rigid' insofar as it requires a special majority and, in some cases, a special procedure for amendment as compared with the procedure prescribed for ordinary legislation. But the procedure is not as complicated or difficult as in the U.S.A. or any other rigid constitution.

THE JUDICATURE:

It has already been pointed out, that not withstanding the adoption of a federal system, the constitution of India has not provided for a double system of courts as in the United States. Under our constitution there is a single integrated system of courts for the union as well as the states which administer both union and state laws, and at the head of the entire system stands the supreme court of India.

Every federal constitution, whatever the degree of cohesion it aims at the union, and both union and the units composing the union and both union and state governments derive their authority from, and are limited by the same constitution. In a federal constitution, the powers are divided between the national and state governments, and there must be some authority to determine disputes between the union and the states or the states inter se and to maintain the distribution of powers as made by the constitution.

Though our federation is not in the nature of a treaty or contract between the component units, there is, nevertheless a division of legislative as well as administrative powers between the union and the states. Article 131 of our constitution, therefore vests the Supreme Court with original and exclusive jurisdiction to determine justiciable disputes between the union and the states or between the states inter se.41
In short there are disputes between different units, of the federation which will be within the exclusive original jurisdiction of the Supreme Court. The original jurisdiction of the Supreme Court will be exclusive, which means that no other court in India shall have the power to entertain any such suit. On the other hand, the Supreme Court in its original jurisdiction will not be entitled to entertain any suit where both the parties are not units of the federation. If any suit is brought either against the state or the Government of India by a private citizen, that will not tie within the original jurisdiction of the Supreme Court but will be brought in the ordinary courts under the ordinary law.

Again, one class of disputes, though of federal nature is excluded from this original jurisdiction of the Supreme Court, namely, a dispute arising out of any treaty, agreement, covenant, engagement; ‘Sanad’ or other similar instrument which having been entered into or executed before the commencement of this constitution continues in operation after such commencement or which provides that the said jurisdiction shall not extend to such a dispute. But these disputes may be referred by the President to the Supreme Court for its advisory opinion.

**DISTRIBUTION OF LEGISLATIVE AND EXECUTIVE POWERS IN THE INDIAN FEDERAL SYSTEM**

A federal system postulates a distribution of powers between the federation and the units. Neither the union legislature nor a state legislature can be said to be ‘Sovereign’ in the legalistic sense each being limited by the provisions of the constitution effecting the distribution of legislative powers as between them, apart from the fundamental rights and other specific provisions restraining their powers in certain matters, eg. Art 216 (2) [limiting the powers of a state legislature to impose a tax on professions]: Article 303 [limiting the
powers of both Parliament and a state legislature with regard to legislation relating to trade and commerce]. If any of these constitutional limitations is violated the law of the legislature concerned is liable to be declared invalid by the courts.

THE SCHEME OF DISTRIBUTION OF LEGISLATIVE POWERS:

The distribution of powers between the federation and the units varies according to the local and political background in each country, the division, obviously, proceeds on two lines-

a) The territory over which the federation and the units shall respectively, have their jurisdiction.

b) The Subject to which their respective jurisdiction shall extend.

The distribution of legislative powers in our constitution under both heads as follows.

I. As regards the territory with respect to which the legislature may legislate, the state legislature naturally suffers from a limitation to which Parliament is not subject namely that the territory of the union being divided amongst the states, the jurisdiction of each state must be confined to its own territory. When, therefore, a state legislature makes a law relating to subject within its competence, it must be read as referring to persons or objects situated within the territory of the state concerned. A state legislature can make laws for the whole or any part of the state to which it belongs (Art. 245 [1]). It is not possible for a state legislature to enlarge its territorial jurisdiction under any circumstances except when the boundaries of the state itself are widened by an Act of Parliament.
The union Parliament has, on the other hand the power to legislate for 'the whole or any part of the territory of India,' which includes not only the states but also the union territories or any other area, for the time being included in the territory of India (Art. 246 [4]). It also possesses the power of extra territorial legislation (Art.245[2]), which no state legislature possesses. This means that laws made by the union Parliament will govern not only persons and property within the territory of India but also Indian subjects resident and their property situated anywhere in the world. No such power to affect persons or property outside the borders of its own state can be claimed by a state legislature in India.

DISTRIBUTION OF LEGISLATIVE SUBJECTS:

As regards the subjects of legislation, the constitution adopts from the Government of India Act, 1935, a threefold distribution of legislative powers between the union and the states [Art, 246]. The Government of India Act, 1935, introduced a scheme of threefold enumeration, namely, Federal, provincial and concurrent. The constitution adopts this scheme from the Act of 1935 by enumerating possible subjects of legislation under three legislative lists in schedule VII of the constitution.

List I or the union list includes 97 subjects over which the union shall have exclusive power of legislation. These includes defence, foreign affairs, banking, currency and coinage, union duties and taxes etc.

List II or the state list comprises 66 items or entries over which the state legislature shall have exclusive power of legislation, such as public order and police, local government, public health and sanitation, agriculture, forests, fisheries, state taxes and duties etc.
List III gives concurrent powers to the union and the state legislatures over 47 items, such as criminal law and procedure, civil procedure, marriage, contracts, torts, trusts, welfare of labour, insurance, economic and social planning and education.

In case of overlapping of a matter as between the three lists, predominance has been given to the union legislature, as under the Government of India Act, 1935. Thus, the power of the state legislature to legislate with respect to matters enumerated in the state list has been made subject to the power of the union Parliament to legislate in respect of matters enumerated in the union and concurrent lists, and the entries in the state list have to be interpreted accordingly.

In the concurrent sphere, in case of repugnancy between a union and a state law relating to the same subject, the former prevails. If however, the state law was reserved for the assent of the President and has received such assent, the state law may prevail notwithstanding such repugnancy, but it would still be competent for Parliament to override such state law by subsequent legislation [Art. 254 (2)].

**RESIDUARY POWERS:**

The vesting of residual power under the constitution follows the precedent of Canada, for, it is given to the union instead of the states [as in the U.S.A and Australia.] In this respect; the constitution differs from the Government of India Act 1935, for under that Act, the residual powers were vested neither in the Federal nor in the state legislature, but were placed in the hands of the Governor-General; the constitution vests residuary power, i.e., the power to legislate with respect to any matter not enumerated in any one of the
three lists in the union legislature [Art.248] and the final authority of determination as to whether a particular matter falls under the residuary power or not is that of the courts.

It should be noted, however, that since the three lists attempt at an exhaustive enumeration of all possible subjects of legislation and the courts interpret the ambit of the enumerated powers liberally. The scope for the application of the residuary power will be very narrow.

While the foregoing analysis may be said to be an account of the normal distribution of the legislative powers, there are certain exceptional circumstances under which the above system of distribution is either suspended or the powers of the union Parliament are extended over state subjects. These exceptional or extra ordinary circumstances are:

a) **In the National Interest:** Parliament shall have the power to make laws with respect to any matter included in the state list, for a temporary period, if the council of states declares by a reduction of 2/3 of its members present and voting that is necessary in the national interest that Parliament shall have power to legislate over such matters. Each such resolution will give a lease of one year to the law in question.

Under Article 249, A law made by Parliament, which Parliament would not but for the passing of such resolution have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period. The resolution of the council of states may be renewed for a period of one year at a time.
b) Under a Proclamation of Emergency:

While a proclamation of 'Emergency' made by the President is in operation, Parliament shall have similar power to legislate with respect to state subjects.

A law made by Parliament, which Parliament would not but for the issue of such proclamation have been competent to make, shall, to the extent of incompetency, cease to have effect on the expiration of a period of six months after the proclamation has ceased to operate, except as respect to things done or omitted to be done before the expiration of the said period under, Article, 250 of the Indian constitution.

c) By Agreement between States:

If the legislatures of two or more states resolve that it shall be lawful for Parliament to make laws with respect to any matters included in the state list relating to those states, Parliament shall have such power as regards such states. It shall also be open to any other state to adopt such union legislation in relation to itself by a resolution passed in that behalf in the legislature of the state. In short, this is an extension of the jurisdiction of the union Parliament by consent of the state legislatures under Article 252.44

Thus, though Parliament has no competence to impose an estate duty with respect to agricultural lands, Parliament in the Estate Duty Act, 1953, included the agricultural lands, situated in certain states, by virtue of resolutions passed by the legislatures of such states, under Article, 252, to confer such power upon Parliament. That Act has since been repealed.
d) To Implement Treaties:

Parliament shall have the power to legislate with respect to any subject for the purpose of implementing treaties or international agreements and conventions. In other words, the normal distribution of powers will not stand in the way of Parliament to enact legislation for carrying out its international obligations, even though such legislative obligations, may be necessary in relation to a state subject under Article 253 of the Indian constitution.

e) Under a Proclamation of Failure of Constitutional Machinery in the States:

When such a Proclamation is made by the President, the President may declare that the powers of the legislature of the state shall be exercisable by or under the authority of Parliament under Article 356 [1] [b] of the Indian constitution.

DISTRIBUTION OF EXECUTIVE POWERS:

The distribution of executive powers between the union and the states is somewhat more complicated than that of the legislative powers.

1) In general, it follows the scheme of distribution of the legislative power. As a result, the executive power of a state is, in the main, co-extensive with its legislative powers, which means that the executive power of state shall extend only to its own territory and with respect to those subjects over which it has legislative competence under Article 162 of the Indian constitution. Conversely, the union shall have exclusive power to-

(a) the matters with respect to which Parliament has exclusive power to make laws (i.e., matters in list of schedule, VII), and
(b) the exercise of its powers conferred by any treaty or agreement under Article 73. On the other hand, a state shall have exclusive executive power over matters included in list II, under Article 162 of the Indian constitution.

II) It is in the concurrent sphere that some novelty has been introduced. As regards matters included in the concurrent legislative list [i.e., list III], the executive function shall ordinarily remain with the states, but subject to the provisions of the constitution or of any law of Parliament conferring such function expressly upon the union. Under the Government of India Act., 1935, the centre had only a power to give directions to a provincial executive to execute a central law relating to a concurrent subject. But this power of giving directions proved ineffective; so, the constitution provides that the union may, whenever it thinks fit, itself take up the administration of union laws relating to any concurrent subject.

In the result, the executive power relating to concurrent subjects remains with the states, except in two cases-

a) where a law of Parliament relating to such subject vests executive function specifically in the union, e.g., the Land Acquisition Act, 1994; the Industrial Disputes Act, 1947. [Proviso to Article 73[1]]. So far as these functions specified in such union law are concerned, it is the union and not the states which shall have the executive power while the rest of the executive power relating to the subjects shall remain with the states.

b) where the provisions of the constitution itself vest some executive functions upon the union thus,
[i] The executive power to implement any treaty or international agreement belongs exclusively to the union, whether the subject belongs to the union, state or concurrent list under Article 73 [1][b] of the Indian constitution.

[ii] The union has the power to give directions to the state governments as regards the exercise of their executive power, in certain matters.

[I] In Normal Times:

a) To ensure due compliance with union laws and existing laws which apply in that state under Article 256 of the Indian constitution.

b) To ensure that the exercise of the executive power of the state does not interfere with the exercise of the executive power of the union under Article 257[1] of the Indian constitution.

c) To ensure the construction and maintenance of the means of communication of national or military importance by the state under Article 257 [2] of the Indian constitution.

d) To protect railways within the state under Article 257 [3] of the Indian constitution.

e) To ensure drawing and execution of schemes specified in the directions to be essential for the welfare of the scheduled Tribes in the states under Article 339 [2] of the Indian constitution.

f) To secure the provision of adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups under Article 350A of the Indian constitution.
g) To ensure the development of the Hindi language under Article 351 of the Indian constitution.

h) To ensure that the government of a state is carried on in accordance with the provisions of the constitution under Article 355 of the Indian constitution.

II. In Emergencies:

a) During a proclamation of emergency, the power of the union to give directions extend to the giving of directions as to the manner in which the executive power of the state is to be exercised, relating to any matter under Article 353[a]. [so as to bring the state government under the complete control of the union, without suspending it.]

b) Upon a proclamation of failure of constitutional machinery in a state, the President shall be entitled to assume himself all or any of the executive powers of the state under Article 356 [1] of the Indian constitution.

III. During a Proclamation of Financial Emergency:

[i] To observe canons of financial property, as may be specified in the directions under Article 360[3].

[ii] To reduce the salaries and allowances of all or any class of persons serving in connection with the affairs of the union including the judges of the Supreme Court and High Courts under Article 360 [4][b].

[iii] To require all money Bills or other financial Bills to be reserved for the consideration of the President after they are passed by the legislature of the state under Article 360 [4].
III. While as regards the legislative powers, it is not competent for the union and a state to encroach upon each other's exclusive jurisdiction by mutual consent, this is possible as regards executive powers. Thus, with the consent of the Government of a state the union may entrust its own executive functions relating to any matter to such state government or its officers under Article 258 [1] of the Indian constitution. Conversely, with the consent of the union government, it is competent for a state government to entrust any of its executive functions to the former under Article 258 A of the Indian constitution.

IV. On the other hand, under Article 258 [2], a law made by Parliament relating to a union subject may authorise the central government to delegate its functions or duties to the state government or its officers [irrespective of the consent of such state government].

**DISTRIBUTION OF FINANCIAL POWERS:**

No system of federation can be successful unless both the union and the states have at their disposal adequate financial resources to enable them to discharge their respective responsibilities under the constitution.

To achieve this object, our constitution has made elaborate provisions, mainly following the lines of the Government of India Act, 1935, relating to the distribution of the taxes as well as non-tax revenues and the power of borrowing, supplemented by provision for grants-in-aid by the union to the states.

A fitting introduction to this arrangement has been given by our Supreme Court in these words.⁴⁵

"Sources of revenue which have been allocated to the union are not meant entirely for the purposes of the union but have to be distributed
according to the principles laid down by Parliamentary legislation as contemplated by the articles aforesaid. Thus all the taxes and duties levied by the union..... do not form part of the consolidated fund of India, but many of these taxes and duties are distributed amongst the states and form part of the consolidated fund of the states. Even those taxes and duties which constitute the consolidated fund of India may be used for the purposes of supplementing the revenues of the states in accordance with their needs. The question of distribution of the aforesaid taxes and duties amongst the states and the principles governing them, as also the principles governing grants-in-aid.... are matters which have to be decided by a high-powered Finance Commission, which is a responsible body designated to determine those matters in an objective way....... The constitution makers realized the fact that those sources of revenue allocated to the states may not be sufficient for their purposes and that the Government of India would have to subsidise their welfare activities....... Realizing the limitations on the financial resources of the states and the growing needs of the community in a welfare state, the constitution has made ......specific provisions empowering Parliament to set aside a portion of its revenues for the benefit of the states, not in stated proportions but according to their needs..... The resources of the union government are not meant exclusively for the benefit of the union activities..... In other words, the union and the states together form one organic whole for the purposes of utilization of the resources of the territories of India as a whole.”

PRINCIPLES UNDERLYING DISTRIBUTION OF TAX REVENUES:

The constitution makes a distinction between the legislative power to levy a tax and the power to appropriate the proceeds of a tax so levied. In India, the powers of a legislature in these two respects are not identical.
A) The legislative power to make a law for imposing a tax is divided as between the union and the states by means of specific entries in the union and the state legislative lists in schedule VII. Thus, while the state legislature has the power to levy an estate duty in respect of agricultural lands [Entry 48 of list-II], the power to levy an estate duty in respect of non-agricultural land belongs to Parliament. [Entry 87 of List-I] Similarly, it is the state legislature which is competent to levy a tax on agricultural income [Entry 46 of List II], while Parliament has the power to levy income tax on all incomes other than agricultural. [Entry 82 of List-II]

The residuary power as regards taxation [as in general legislation] belongs to Parliament [Entry 97 of List-1] and the Gift tax and Expenditure tax have been held to derive their authority from this residuary power. There is no concurrent sphere in the matter of tax legislation.

It should be pointed out that though a state legislature has the power to levy any of the taxes enumerated in the state legislative list, in the case of certain taxes, this power is subject to certain limitations imposed by the substantive provisions of the constitution. Thus [a] While Entry 60 of List-II of sch. VII authorizes a state legislature to levy a tax on profession, trade, calling or employment, the total amount payable in respect of any one person to the state or any other authority in the state by way of such tax shall not exceed Rs.2500\(^{46}\) per annum under Article 276[2] of the Indian constitution.

**SALES TAX:**

The power to impose taxes on ‘sale or purchase of goods other than newspapers’ belongs to the state [Entry 54, list-II], But ‘taxes on imports and
exports' [Entry 83, list-1] and ‘taxes on sale in the course of inter-state trade and commerce’ [Entry 92A, List-1] are exclusive union subjects. Article 286 is intended to ensure that sales taxes imposed by states do not interfere with imports and exports or inter-state trade and commerce which are matters of national concern, and should, therefore, be beyond the competence of the states. Hence, certain limitations have been laid down by Article 286 upon the power of the states to enact sales tax legislation.

1. [a] No tax shall be imposed on sale or purchase which takes place outside the state.

   [b] No tax shall be imposed on sale or purchase which takes place in the course of import into or export out of India.

2. In connection with inter-state trade and commerce there are two limitations-

   [i] The power to tax sales taking place ‘in the course of inter state trade and commerce’\(^47\) is within the exclusive competence of Parliament [Entry 92A List-1].

   [ii] Even though a sale does not take place ‘in the course of’ inter state trade or commerce, state taxation would be subject to restrictions and conditions imposed by Parliament if the sale relates to ‘goods declared by Parliament to be of special importance in inter-state trade and commerce. In pursuance of this power, Parliament has declared sugar, tobacco, cotton, silk and woolen fabrics to be goods of special importance in inter-state trade and commerce, by enacting the Additional Duties of Excise [Goods of special Importance] Act, 1957 [schedule 7], and imposed special restrictions upon the states to levy tax on the sales of these goods.
c) Save insofar as Parliament may by law otherwise provide, no law of a state shall impose, or authorize the imposition of, a tax on the consumption or sale of electricity [Whether produced by a government or other persons] which is-

[i] Consumed by the Government of India, or sold to the Government of India for consumption by that government or

[ii] Consumed in the construction, maintenance or operation of railway by the Government of India, or a railway company operating that railway, or sold to that government or any such railway company for consumption in the construction, maintenance or operation of any railway under Article 287 of the Indian constitution.

d) The property of the union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a state or by any authority within a state under Article 285[1] of the Indian constitution.

**EXEMPTION OF UNION AND STATE PROPERTIES FROM MUTUAL TAXATION:**

Conversely, the property and income of a state shall be exempted from union taxation under Article 289[1]. However, if a state enters into a trade or business, which is declared by Parliament to be incidental to the ordinary business of government, it shall not exempt from union taxation under Article 289[2]. The immunity, again, relates to a tax on property. Hence, the property of a state is not immune from customs duty.

**DISTRIBUTION OF PROCEEDS OF TAXES:**

Even though, a legislature may have been given the power to levy a tax because of its affinity to the subject matter of taxation, the yield of different
taxes coming within the state legislative sphere may not be large enough to serve the purpose of a state. To meet this situation, the constitution makes special provisions:

[i] Some duties are leviable by the union but they are to be collected and entirely appropriated by the states after collection.

[ii] There are some taxes which are both levied and collected by the union, but the proceeds are then assigned by the union to those states within which they have been levied.

[iii] Again, there are taxes which are levied and collected by the union but the proceeds are distributed between the union and the state.

DISTRIBUTION OF THE TAX-REVENUE BETWEEN THE UNION AND THE STATES:

The distribution of the tax revenue between the union and the states, according to the foregoing principles, stands as follows:

A) **Taxes Belonging to the Union Exclusively:**

Customs, Corporation tax, Taxes on capital value of assets of individuals and companies, Surcharge on income tax etc, Fees in respect of matters in the union list.

B) **Taxes Belonging to the States Exclusively:**

Land Revenue, Stamp duty except in documents included in the union list, Succession duty, estate duty and Income tax on agricultural land, Taxes on passengers and goods carried on inland waterways, Taxes on lands and buildings, mineral rights, Taxes on animals and boats, on road vehicles, on advertisements, on consumption of electricity, on luxuries and amusements
etc., Taxes on entry of goods into local areas, Sales Tax, Tolls, Fees in respect of matters in the state list, Taxes on professions, trades, etc., not exceeding Rs. 2,500 per annum [List-II].

C) Duties Levied by the Union but Collected and Appropriated by the States:

Stamp duties on bills of exchange, etc., and excise duties on medicinal and toilet preparations containing alcohol, though they are included in the union list and levied by the union, shall be collected by the states insofar as leviable within their respective territories and shall form part of the states by whom they are collected under Article 268 of the Indian constitution.

D) Taxes Levied as well as Collected by the Union but Assigned to the States within which they are Leviable:

a) Duties on succession to property other than agricultural land.

b) Estate duty in respect of property other than agricultural land.

c) Terminal taxes on goods or passengers carried by railway, air or sea.

d) Taxes on railway fares and freights.

e) Taxes on stock exchange other than stamp duties.

f) Taxes on sales of and advertisements in newspapers.

g) Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce.

h) Taxes on inter state consignment of goods under Article 269 of the Indian constitution.
E) Taxes Levied and Collected by the Union and Distributed Between Union and the States:

Certain taxes shall be levied as well as collected by the union, but their proceeds shall be divided between the union and the states in a certain proportion, in order to effect an equitable division of the financial resources. These are-

a) Taxes on income other than on agricultural income under Article 270 of the Indian constitution.

b) Duties of excise are included in the union list, excepting medicinal and toilet preparations may also be distributed, if Parliament by law so provides under Article 272 of the Indian constitution.

F) The Principle Sources of Non-tax Revenues of the Union are the Receipts From:

Railways, Posts and Telegraphs, Broadcasting, Opium, Currency and mint, Industrial and Commercial undertakings of the central government relating to the subjects over which the union has jurisdiction.

Of the Industrial and commercial undertakings relating to central subjects may be mentioned.

The Industrial Finance corporation, The Air corporations, Industries in which the Government of India have made investments, such as Sindri Fertilizers and chemicals Ltd; the Hindustan Shipyard Ltd, the Indian Telephone Industries Ltd.

G) The states similarly, have their receipts from Forests, Irrigation and commercial enterprises [like Electricity, Road Transport] and Industrial
undertakings [Such as soap, sandalwood, Iron and steel in Karnataka, paper in Madhya Pradesh, Milk Supply in Bombay, Deep sea Fishing and silk in west Bengal.]

GRANTS-IN-AID:

Even after the assignment to the states of a share of the central taxes, the resources of all the states may not be adequate enough. The constitution, therefore, provides that grants-in-aid shall be made each year by the union to such states as Parliament may determine to be in need of assistance. Particularly, for the promotion of welfare of tribal areas, including special grants to Assam in this respect under Article 275 of the Indian constitution.

SAFEGUARDING THE INTERESTS OF THE STATES IN THE SHARED TAXES-

By way of safeguarding the interests of the states in the union taxes which are divisible according to the foregoing provisions, it is provided by the constitution under Article 274 that no Bill or amendment which-

a) Varies the rate of any tax or duty in which the states are interested: or

b) Affects the principles on which finance is distributable according to the foregoing provisions of the constitution: or

c) Imposes any surcharge on any such tax or duty for the purposes of the union, shall be introduced or moved in Parliament except on the recommendation of the President..

Subject to the above condition, however, it is competent for Parliament to increase the rate of any such tax or duty [by imposing a surcharge] for purposes of the union under Article 271 of the Indian constitution.
FINANCIAL CONTROL BY THE UNION IN EMERGENCIES:

As in the legislative and administrative spheres, so in financial matters, the normal relation between the union and the states under Article 268 to 279 is liable to be modified according to the different kinds of proclamation of emergencies. Thus-

a) While a proclamation of emergency under Article 352 [1] is in operation, the President may by order direct that, for a period not extending beyond the expiration of the financial year in which the proclamation ceases to operate, all or any of the provisions relating to divisions of the taxes between the union and the states and grants in aid shall be suspended under Article 354. As a result, if any such order is made by the President, the states will be left to their narrow resources from the revenues under the state list without any augmentation by contributions from the union.

b) While a proclamation of financial emergency under Article 360[1] is made by the President, it shall be competent for the union to give directions to the states-

i) To observe such canons of financial propriety and other safeguards as may be specified in the directions.

ii) To reduce the salaries and allowances of all persons serving in connection with the affairs of the state, including High Court Judges.

iii) To reserve for the consideration of the President all money and financial Bills, after they are passed by the legislature of the state under Article 360 of the Indian constitution.
BORROWING POWERS OF THE UNION AND THE STATES:

The union shall have unlimited power of borrowing upon the security of the revenues of India either within India or outside. The union executive shall exercise the power subject only to such limits as may be fixed by Parliament from time to time under Article 292 of the Indian constitution.

The borrowing power of a state is, however subject to a number of constitutional limitations-

i) It cannot borrow outside India. Under the Government of India Act, 1935, the states had the power to borrow outside India with the consent of the centre. But this power is totally denied to the states by the constitution. The union shall have the sole right to enter into the international money market in the matter of borrowing.

ii) The state executive shall have the power to borrow, within the territory of India upon the security of the revenues of the state, subject to the following conditions-

a) Limitations as may be imposed by the state legislature.

b) If the union has guaranteed an outstanding loan of the state, no fresh loan can be raised by the state without the consent of the union government.

c) The Government of India may itself offer a loan to the state, under a law made by Parliament so long as such a loan or any part thereof remains outstanding, no fresh loan can be raised by the state without the consent of the Government of India. The Government of India may impose terms in giving its consent as above under Article 293 of the Indian constitution.
ADMINISTRATIVE RELATIONS BETWEEN THE UNION AND THE STATES-

Any federal scheme involves the setting up of dual governments and division of powers. But the success and strength of the federal polity depends upon the maximum of co-operation and co-ordination between the governments. The topic may be discussed under two heads.

a) Relation between the union and states.

b) Relation between the states interse.

c) Firstly, we shall discuss the-

a) Relation Between the Union and States:

TECHNIQUES OF UNION CONTROL OVER STATES:

It would be convenient to discuss this matter under two heads -

i) In emergencies.

ii) In normal times.

i. In Emergencies- During emergencies the government under Indian constitution will work as if it were a unitary government.

ii. In Normal Times: Even in normal times, the constitution has devised techniques of control over the states by the union to ensure that the state government do not interfere with the legislative and executive policies of the union and also to ensure the efficiency and strength of each individual unit which is essential for the strength of the union.

Some of these avenues of control arise out of the executive and legislative powers vested in the President, in relation to the states, e.g;
i) The power to appoint and dismiss the Governor [Arts-155-156]; the power to appoint other dignitaries in the state, e.g., Judges of the High Court; Members of the State Public Service Commission [Arts 217, 317].

ii) Legislative powers e.g., previous sanction to introduce legislation in the state legislature [Art. 304 proviso]; assent to specified legislation which must be reserved for his consideration [Arts 31A[1]], prov.1; 31C, prov. 288[2]]; instructions of President required for the Governor to make ordinance relating to specified matters [Art.213[1]]; Veto power in respect of other state Bills reserved by the Governor [Art.200, prov. 1].

Other Specific Agencies for Union Control Namely :

i) Directions by the union to the state government.

ii) Delegation of union functions.

iii) All India services.


v) Inter-state council.

vi) Inter-state commerce commission [Art.307].

i) Directions by the Union to State Government:

The idea of the union giving directions to the states is foreign and repugnant to a truly federal system. But this idea was taken by the framers of our constitution from the Government of India Act, 1935, in view of the peculiar conditions of this country and particularly, the circumstances out of which the federation emerged.
It is to be noted that the constitution prescribes a coercive sanction for the enforcement of the directions issued under any of the foregoing powers, namely the power of the President to make a proclamation under Article 356. This is provided in Article 356 as follows.

"Where any state has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the union under any of the provisions of this constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of this constitution."48

And as soon as a proclamation under Article 356 is made by the President, he will be entitled to assume to himself any of the functions of the state government as are specified in that Article.

ii) Delegation of Functions:

While legislating on a union subject Parliament may delegate powers to the state governments and their officers insofar as the statute is applicable in the respective states under Article 258 [2] of the Indian constitution.

Conversely, a state government may, with the consent of the government of India, confer administrative functions upon the latter, relating to state subjects under Article 258A of the Indian constitution.

Thus, where it is inconvenient for either governments to directly carry out its administrative functions, it may have those functions executed through the other government.

iii) All India Services:

Article 312 [2] provides that besides persons serving under the union and the states, there will be certain services common to the union and the states. These are called ‘All India services’.
As explained by Dr. Ambedkar in the constituent assembly, the object behind this provision for All-India services is to impart a greater cohesion to the federal system and greater efficiency to the administration in both the union and the states:

"The dual policy which is inherent in a federal system is followed in all federations by a dual service. In all federations, there is a federal civil service and a state civil service. The Indian federation, though a dual polity, will have a dual service, but with one exception. It is recognized that in every country there are certain parts in its administrative set-up which might be called strategic from the point of view of maintaining the standard of administration.... There can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to these strategic posts.... The constitution provides that without depriving the states of their right to form their own civil services there shall be an all India service, recruits on an all India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the union." 49

[IV] Grants-in-Aid:

Under Article 275 of the Indian constitution, Parliament is given power to make such grants as it may deem necessary to give financial assistance to any state which is in need of such assistance.

By means of the grants, the union would be in a position to correct interstate disparities in financial resources which are not conducive to an all-round development of the country and also to exercise control and co-ordination over the welfare schemes of the states on a national scale.
Besides this general power to make grants to the states for financial assistance, the constitution provides for specific grants on two matters:

[a] For schemes of development for welfare of scheduled Areas, as may have been undertaken by a state with the approval of the Government of India.

b) To the State of Assam, for the development of the tribal Areas in that state. [proviso 1-2, Article 275 [1]].

V) Inter-State-Council:

The President is empowered to establish an inter-state council under Article 263 of the Indian constitution, if at any time it appears to him that the public interests would be served thereby. Though the President is given the power to define the nature of the duties to be performed by the council, the constitution outlines the three-fold duties that may be assigned to this body. One of these is: "the duty of inquiring into and advising upon disputes which may have arisen between states."50

The other functions of such council would be to investigate, discuss subjects of common interest between the union and the states or between two or more states inter se. e.g., research in such matters as agriculture, forestry, public health and to make recommendation for co-ordination of policy and action relating to such subject.

The Sarkaria commission has recommended the constitution of a permanent Inter-state council, which should be charged with the duties set out in [b] and [c] of Article 263.
VI) Inter-State Commerce Commission:

For the purpose of enforcing the provisions of the constitution relating to the freedom of trade, commerce and intercourse throughout the territory of India [Article 301-305], Parliament is empowered to constitute an authority and to confer on such authority such powers and duties as it may deem fit under Article 307 of the Indian constitution.

Apart from the above constitutional agencies for union control over the states, to ensure a co-ordinated development of India notwithstanding a federal system of government, there are some advisory bodies and conferences held at the union level, which further the co-ordination of state policy and eliminate differences between the states.

B) Co-operation Between the Union and the States:

Apart from the agencies of federal control, there are certain provisions which tend towards a smooth working of both the union and state governments, without any unnecessary conflict of jurisdiction. These are-

i) Mutual delegation of functions.

ii) Immunity from mutual taxation.

i) Mutual delegation of functions:

The union can delegate the functions-

i) With the consent of the state government, the President may, without any legislative sanction, entrust any executive function to that state. [Article 258[1]].

ii) Irrespective of any consent of the state concerned, Parliament may, while legislating with respect to union subject; confer powers upon a state or its officers, relating to such subject under Article 258[2] such delegation has, in short, a statutory basis.
iii) Conversely, with the consent of the government of India, the Governor of a state may entrust on the union government or its officers, functions relating to a state subject, so far as that state is concerned [Article 258A].

ii) Immunity from Mutual Taxation:

The system of double government set up by a federal constitution requires for its smooth working, the immunity of the property of one government from taxation by another. Though there is same difference between federal constitutions as to the extent to which this immunity should go, there is an agreement on the principle that mutual immunity from taxation would save a good deal of fruitless labour in assessment and calculation and cross accounting of taxes between the union and the state governments. This matter is dealt with in Articles 285 and 289 of our constitution, relating to the immunity of the union and a state respectively.

INTER-STATE RELATIONS:

Though a federal constitution involves the sovereignty of the units within their respective territorial limits, it is not possible for them to remain in complete isolation from each other and the very exercise of internal sovereignty by a unit would require its recognition by, and co-operation of, the other units of the federation. All federal constitutions, therefore lay down certain rules of comity which the units are required to observe, in their treatment of each other. These rules and agencies relate to such matter as-

a) Recognition of the public acts, records and judicial proceedings of each other.

b) Extra judicial settlement of disputes.
c) Co-ordination between states.

d) Freedom of inter-state trade, commerce and intercourse.

A) Recognition of Public Acts, etc:

The constitution under Article 261 [1] provides that, "Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the union and every state."\(^51\)

This means that duly authenticated copies of statutes or statutory instruments, judgements or orders of one state shall be given recognition in another state in the same manner as the statutes etc., of the latter half itself. Under Article 261 [2] Parliament has the power to legislate as to the mode of proof of such acts and records or the effects thereof.

B) Extra-Judicial settlement of Disputes:

Since the states, in every federation, normally act as independent units in the exercise of their internal sovereignty, conflicts of interest between the units are sure to arise. Hence, in order to maintain the strength of the union, it is essential that there should be adequate provision for judicial determination of disputes between the units and for settlement of disputes by extra-judicial bodies as well as their prevention by consultation and joint action. While Article 131 provides for the judicial determination of disputes between states by vesting the Supreme Court with exclusive jurisdiction in the matter, Article 262 provides for the adjudication of one class of such disputes by an extra-judicial tribunal, while Article 263 provides for the prevention of inter-state disputes by investigation and recommendation by an administrative body.
c) Co-ordination Between States:

The power of the President to set up inter state councils may be exercised not only for advising upon disputes, but also for the purpose of investigating and discussing subjects in which some or all of the states or the union and one or more of the states have a common interest. In the exercise of this power, the President has already constituted central council of health, the central council of local self-government, the central council of Indian medicine, central council of Homeopathy.

The advisory bodies to advise on inter-state matters have also been established under statutory authority.

The Water Disputes Act, 1956, provides for the reference of an inter-state river dispute for arbitration by a Water Disputes Tribunal, whose award would be final according to Article 262 [2].

II. Freedom of Inter-State Trade and Commerce:

The freedom of movement or passage of commodities and of commercial transactions between one part of the country and another, the progress of the country as a whole also requires free flow of commerce and intercourse as between different parts, without any barrier. This is particularly essential in a federal system. This freedom is sought to be secured by the provisions [Articles 301-307] contained in part XIII of our constitution. These provisions however, are not confined to inter-state freedom but include intra state freedom as well. In other words, subject to the exceptions laid down in this part, no restrictions can be imposed upon the flow of trade, commerce and intercourse, not only as between one state and another but as between any two
Article 301 thus declares:

"Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free."

The limitations imposed upon the above freedom by the other provisions of part XIII are:

a) Non-discriminatory restrictions may be imposed by Parliament, in the public interest according to Article 302.

By virtue of this power, Parliament has enacted the Essential Commodities Act, 1955, which empowers, 'in the interest of the general public'; the central government to control the production, supply and distribution of certain 'essential commodities', such as coal, cotton, iron and steel production, petroleum.

b) Even discriminatory or preferential provisions may be made by Parliament, for the purpose of dealing with a scarcity of goods arising in any part of India according to Article 303 [2].

c) Reasonable restrictions may be imposed by a state, 'in the public interest', according to Article 304 [b].

d) According to Article 304[a], Non discriminatory taxes may be imposed by a state on goods imported from other states or union territories, similarly as on intra state goods.

e) The appropriate legislature may make a law [under Article 19[6][ii]] for the carrying on by the state or by a corporation owned or controlled by
the state of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Before leaving this topic, we should notice the difference in the scope of the provisions of Arts. 19[1][g] and 301 both of which guarantee the freedom of trade and commerce.

Though this question has not been finally settled, it may be stated broadly that Article 19[1][g] looks at the freedom from the standpoint of the individual who seeks to carry on a trade or profession and guarantees such freedom throughout the territory of India subject to reasonable restrictions, as indicated in Article 19[5]. Article 301, on the other hand, looks at the freedom from the standpoint of the movement or passage of commodities or the carrying on of commercial transactions between one place and another, irrespective of the individuals who may be engaged in such trade or commerce. The only restrictions that can be imposed on the freedom declared by Article 301 are to be found in Articles 302-305. But if either of these freedoms be restricted, the aggrieved individual or even a state may challenge the constitutionality of the restriction, whether imposed by an executive order or by legislation. When there is a violation of Article 301 or 304, there would ordinarily be an infringement of an individual’s fundamental right guaranteed by Article 19[1][g], in which case, he can bring an application under Article 32, even though Article 301 or 304 is not included in part-III as a fundamental right.

EMERGENCY PROVISIONS:

The emergency provisions of our constitution enable the federal government to acquire the strength of a unitary system whenever the exigencies of the situation so demand.
DIFFERENT KINDS OF EMERGENCIES:

The constitution provides for three different kinds of abnormal situations which call for a departure from the normal governmental machinery set up by the constitution-Viz.,

i) An emergency due to war, external aggression or armed rebellion [Article 352].

The emergency provisions in part XVIII of the constitution [Arts.352-360] have been extensively amended by the 42nd amendment [1976] and the 44th amendment [1978] Acts, so that the proclamation of emergency may be made by the President at any time if he satisfied that the security of India or any part thereof has been threatened by war, external aggression or armed rebellion under Article 352. It may be made even before the actual occurrence of any such disturbance, e.g., when external aggression is apprehended.

According to Article 352[3], no such proclamation can be made by the President unless the union ministers of cabinet rank, headed by the Prime Minister recommend to him, in writing that such a proclamation should be issued.

While the 42nd amendment made the declaration immune from judicial review, that fetter has been removed by the 44th Amendment, so that the constitutionality of the proclamation may possibly be questioned in a court on the ground of *malafides*. Every such proclamation must be laid before both houses of Parliament and shall cease to be in operation unless it is approved by resolution of both houses of Parliament within one month from the date of its issue.
Until the 44th Amendment of 1978, there was no Parliamentary control over the revocation of a proclamation, once the issue of the proclamation had been approved by resolutions of the Houses of Parliament.

After the 44th Amendment a proclamation under Article 352 may come to an end in the following way-

a) On the expiry of one month from its issue, unless it is approved by resolutions of both Houses of Parliament before the expiry of that period. If the House of the people is dissolved at the date of issue of the proclamation or within one month thereof, the proclamation may survive until 30 days from the date of the first sitting of the House after its reconstitution, provided the council of states has in the meantime approved of it by a resolution. [C [4]]

b) It will get a fresh lease of 6 months from the date it is approved by resolution of both Houses of Parliament [Cl.5]. So that it will terminate at the end of 6 months from the date of last such resolution.

c) Every such resolution under cls. [4]-[5], must be passed by a special majority in each House. [c][6].

d) The President must issue a proclamation of revocation any time that the House of the people passes a resolution disapproving of the issue or continuance of the proclamation. [c][7]. For the purpose of convening a special sitting of the House of the people for passing such a resolution of disapproval, power has been given [c.[8]] to not less than 1/10 of the Members of the House to give a notice in writing to the speaker or to the President [When the House is not in session] to convene a special sitting
of the House for this purpose, within 14 days from the date of service of such notice on the speaker or the President, as the case may be.

It may be that an armed rebellion or external aggression has affected only a part of the territory of India which is needed to be brought under greater control. Hence, it has been provided by the 44th amendment, that a proclamation under Article 352 may be made in respect of the whole of India or only part thereof.

The executive and the legislature of the union shall have extraordinary powers during an emergency period.

THE EFFECTS OF PROCLAMATION OF EMERGENCY-

The effects of proclamation of emergency may be discussed under four heads-

i) Executive

ii) Legislative

iii) Financial

iv) Fundamental Rights.

i) Executive:

When a proclamation of emergency has been made, the executive power of the union shall, during the operation of the proclamation extend to the giving of directions to any state as to the manner in which the executive power thereof is to be exercised according to Article 353 [a].
Under a proclamation of emergency, the government of India shall acquire the power to give directions to a state on any matter, so that though the state government will not be suspended, it will be under the complete control of the union executive, and the administration of the country insofar as the proclamation goes, will function as under a unitary system with local subdivisions.

ii) Legislative:

   a) While a proclamation of emergency is in operation, Parliament may, by law, extend the normal life of the House of the people [5 years], for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate. [proviso to Art. 83 [2], ante]

   b) As soon as a proclamation of emergency is made, the legislative competence of the union Parliament shall be automatically widened and the limitation imposed as regards list-II, by Article 246(3) shall be removed. In other words, during the operation of the proclamation of emergency, Parliament shall have the power to legislate as regards list [State List] as well [Art. 205[1]]. Though the proclamation will not suspend the state legislature, it will suspend the distribution of legislative powers between the union and the state, so far as the union is concerned, so that the union Parliament may meet the emergency by legislation over any subject as may be necessary as if the constitution were unitary.

   c) In order to carry out the laws made by the union Parliament under its extended jurisdiction as outlined above, Parliament shall have the
power to make laws conferring powers, or imposing duties [as may be necessary for the purpose], upon the executive of the union in respect of any matter, even though such matter normally belonged to state jurisdiction according to Article 353 [b].

iii) Financial:

During the operation of the proclamation of emergency the President shall have the constitutional power to modify the provisions of the constitution relating to the allocation of financial relations between the union and the states, by his own order. But no such order shall have effect beyond the financial year in which the proclamation itself ceases to operate, and further, such order of the President shall be subject to approval by Parliament under Article 354.

IV) As Regards Fundamental Rights:

Articles 358-359 lay down the effects of a proclamation of emergency upon fundamental rights. As amended up to 1978, by the 44th Amendment Act, the following results emerged.

I. While Article 358 provides that the state would be free from the limitations imposed by Article 19, so that these rights would be non-existent against the state during the operation of a proclamation of emergency, under Article 359, the right to move to the courts for the enforcement of the rights or any of them, may be suspended, by order of the President.

II. While Article 359 would apply to an emergency declared on any of the grounds specified in Article 352 i.e., war, external aggression or armed rebellion, the application of Article 358 is confined to the case of emergency on grounds of war or external aggression only.
III. While Article 358 comes into operation automatically to suspend Article 19 as soon as a proclamation of emergency on the ground of war or external aggression is issued, to apply Article 359 a further order is to be made by the President, specifying those fundamental rights against which the suspension of enforcement shall be operative.

IV. Article 358 suspends Article 19; the suspension of enforcement under Article 359 shall relate only to those fundamental rights which are specified in the President's order, excepting Articles 20 and 21. In the result, notwithstanding an emergency, access to the courts cannot be barred to enforce a prisoners or detenu's right under Article 20 and 21.

V. Neither Article 358 nor 359 shall have the effect of suspending the operation of the relevant fundamental right unless the law which affects the aggrieved individual contains a recital to the effect that "such law is in relation to the proclamation of emergency". In the absence of such recital in the law itself, neither such law nor any executive action taken under it shall have any immunity from challenge for violation of a fundamental right during operation of the emergency [c][2] of Article 358 and CI [IB] of Article 359

PROCLAMATION OF FAILURE OF CONSTITUTIONAL MACHINERY IN A STATE:

Article 356 was incorporated under the Indian constitution which come into effect on January 26, 1950 was again slightly amended by 44th Amendment Act which reads as follows-356 provision in case of failure of constitutional machinery in states -
1) If the President on receipt of 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 all or any of the functions of the executive of the state or to of any other authority save the High Court; and

b) Declare that the powers of the legislature of the state shall be exercisable by or under the authority of Parliament. In short, by such proclamation the union would assume control over all functions in the state administration, except judicial.

When the state legislature is thus suspended by proclamation, it shall be competent.

a) For Parliament to delegate the power to make laws for the state to the President or any other authority specified by him.

b) For the President to authorize, when the House of the people (Lok Sabha) is not in session, expenditure from Parliament; and

c) For the President to promulgate ordinances for the administration of the state. When Parliament is not in session [Article 357].

The duration of such proclamation shall ordinarily be for two months. If however, the proclamation was issued when the House of the people was dissolved or dissolution took place during the period of the two months in the proclamation of failure of constitutional machinery the proclamation would cease to operate on the expiry of 30 days from the date on which the reconstituted House of people first met, unless the proclamation is approved by
Parliament. The two months duration of such proclamation can be extended by resolutions passed by both Houses of Parliament for a period of 6 months at a time, subject to a maximum duration of three years [Article 365 [3]-[4]]; if the duration is sought to be extended beyond one year, two other conditions, as inserted by the 44th Amendment Act, 1978 have to be satisfied namely that-

a) a proclamation of emergency is in operation, in the whole of India or as the case may be, in the whole or any part of the state, at the time of the passing of such resolution and

b) the election commission certifies that the continuance in force of the proclamation approved under clause [3] during the period specified in such resolution is necessary on account of difficulties in holding general elections to the legislative Assembly of the state concerned.

By the 42nd Amendment, 1976, the President’s satisfaction for the making of a proclamation under Article 356 had been made immune from judicial review, but the 44th Amendment of 1978 has removed immune so that the courts may now interfere if the proclamation is malafide or the reasons disclosed for making the proclamation have no reasonable nexus with the satisfaction of the President.

The proclamation in case of failure of the constitutional machinery differs from a proclamation of ‘emergency’ on the following points-

i) A proclamation of emergency may be made by the President only when the security of India or any part thereof is threatened by war, external aggression or armed rebellion. A proclamation in respect of failure of the constitutional machinery may be made by the President when the constitutional government of state cannot be
carried on for any reasons, not necessarily with war or armed rebellion.

ii) When a proclamation of emergency is made, the centre shall get no power to suspend the state government or any part thereof. The state executive and legislature would continue in operation and retain their powers. All that the centre would get concurrent powers of legislation and administration of the state. But under a proclamation in case of failure of the constitutional machinery, the state legislature would be suspended and the executive authority of the state would be assumed by the President in whole or in part. [This is why it is popularly referred to as the imposition of the 'President's rule']

iii) Under a proclamation of emergency. Parliament can legislate in respect of state subjects only by itself, but under a proclamation of the other kind, it can delegate its powers to legislate for the state, to the President or any other authority specified by him.

iv) In the case of a proclamation of failure of constitutional machinery, there is a maximum limitation to the power of Parliament to extend the operation of the proclamation of emergency, it may be continued for a period of six months by each resolution of the both Houses of Parliament approving its continuance, so that if Parliament so approves, the proclamation may be continued indefinitely as long as the proclamation is not revoked or in Parliament does not cease to make resolutions approving its continuance. [new clause [5] to Article 352, inserted by the 44th Amendment Act, 1978].
It is clear that the power to declare a proclamation of failure of constitutional machinery in a state has nothing to do with any external aggression or armed rebellion; It is an extra ordinary power of the union to meet a political breakdown in any of the units of federation, which might affect the national strength. It is one of the coercive powers at the hands of the union to maintain the democratic form of government, and to prevent factional strifes from paralysing the governmental machinery in the states.

As we have discussed in the first section about the constitutional framework of Indian federal system, we may conclude this section by saying that the architects of Indian federation have in their frame of reference the valuable experience of working of the old federations. This historical experience guides the foot-steps of the constitution makers, and widens and deepens their knowledge. In light of thus, they can find out the sources of weaknesses of the old federations. The constitution makers of Canada, for instance, profited from the experience of the United States in providing for a strong centre. They discovered the cause of the American civil war in the emphasis of the constitution on state’s rights and powers. As Macdonald argued at the Quebec conference, “in framing the constitution, care should be taken to avoid the mistakes and weaknesses of the United State’s system, the primary error of which was the reservation to the different states of all powers not delegated to the central government. We must reverse this process by establishing a strong central government, to which shall belong all powers not specially conferred on the provinces.”

If, to prevent the recurrence of the American catastrophe on the Canadian soil, the Canadian constitution provided for a strong centre, then the fathers of the Indian constitution did wisely frame a federal structure with a
strong centre for a country where regional loyalties might take a dangerous shape and disrupt the union. The choice of “Union of States” and not “Federation of states” in Article 1 of the constitution was deliberately made to emphasize the centralized bias of an “indestructible union” and that was done clearly to avoid the recurrence of the American civil war on Indian soil.

The operation of the older federations has revealed a great departure from their original design. That has been the consequence of the remarkable changes which have taken place, since the American constitution came into existence in 1787, in the technical and economic factors, and in the political and social environment. All these developments have altered the background of federalism. The logic of this change has revealed itself in a marked centralizing tendency in all federations. Therefore, this universal tendency of centralization obtaining in all recognized federations has profoundly influenced the traditional concept of federalism. Hence, new federal constitutions cannot be cast in the traditional mould which has largely broken down under the pressure of new technical, economic, political and social factors.

The constitution-makers of India were much influenced by this new development in the older federations. Centralization is a compulsion as revealed through experience, and the constitution of India has followed it. Alladi Krishnaswami Ayyar, while defending the powers of the centre, observed: “the whole concept of federalism in the modern world is undergoing a transformation. As a result of the impact of social and economic forces, rapid means of communication and the necessary close relation between the different units in matters of trade and Industry, federal ideas themselves are under going transformation in the modern world.” Thus the influence of centralization, which is a universal phenomenon today, is writ large on the face of the constitution of India.
While Indian society is highly heterogeneous, Indian political system is remarkably homogeneous characterized by a near monopoly, position enjoyed by the congress party. This political homogeneity offsets in a large measure the pulls and pressures of local diversities and acts as a powerful centripetal force in India. At the time of constitution making this centralizing force was more powerful and manifest, as organized opposition was then almost non-existent. The constellation of circumstances was there for the formation of a ‘contractual’ federation. The representatives from both the former provinces and the princely states were present at the historic constituent assembly; the ground was ready for them to enter into an agreement. But the existence of a party which possessed almost complete control over the political situation did not allow the establishment of a ‘contractual’ federation, and ultimately led to the victory of the centripetal forces. As C.H. Adexandrowicz wrote, “Owing to a mono-party reality tendencies of centralization prevailed over those of decentralization.”

We have examined in some detail the multiple forces and influence which shaped the nature of Indian federalism. We have also seen how the centralising forces had won over the decentralising influences, and this victory introduced a marked centralised bias in Indian federal structure. In India, as we seen in our discussion on the working of the federal system, the forces of unification are pitted against the forces of separatism. While the former are continuous and always active, the latter are generally dormant. But at times they are active indeed, and then they would, like a sleeping volcano suddenly get awake, tend to burst asunder India’s national unity and introduce serious strains and stresses in her federal system.

All these serious strains and stresses will be discussed in II-section of this chapter.
The history of Indian federalism dates back to Lord Mayo's decentralization policy of 1870 but the Government of India's Act of 1919 provided a federal character to India. The authors of Mont-ford Reforms announced their conception of the eventual future of India as a sisterhood of states self-governing in all matters of purely local or provincial interests. The Mont-ford Reforms provided for a federal frame for India in a limited measure by way of division of powers between the centre and the provinces. The Mont-ford Reforms provided for 47 subjects in the central list, 50 subjects in the provincial list, all with a spirit of unitary government. Later the Simon Commission declared that the recommendation of the constitution was to be made on a federal basis and that only in a federal structure that sufficient elasticity can be obtained for the union of elements of diverse internal conditions and the communities at very different stages of development and culture. Later the Government of India Act, of 1935 gave a concrete design of federation to the future constitution of India. The British wanted to bring the Indian states together with the British provinces at the centre. As the Indian National congress was reluctant for such a design the federal part of the Act of 1935 could not materialise. With the dawn of Indian independence, it was considered that only a federal system would benefit India and such an idea was warmly received by almost all sections of the Indian society. Luckily the Indian states also agreed to join the Indian federation, thanks to the vision and statesmanship of Sardar Vallabhbhai Patel.
The Indian constitution came into force on 26th January 1950. It has provided a federal system of government in India. For a clear understanding of the real nature of Indian federalism, it shall be desirable to make an assessment of its functional dimensions. In this regard the following points deserve attention.

I. A strong centre-centralizing tendencies.


III. Article-356: president’s rule.

IV. Inter -State Disputes.

V. Financial Relations.

VI. Planning Issues.

VII. The use of Para-Military Forces by the centre in the states.

I. A Strong Centre: Centralizing Tendencies:

India represents a plural society in which a variety of ethnic, linguistic and religious groups coexist in terms of varying co-operation, competition. Consequently, the founding fathers of the Indian constitution, taking the Government of India Act, 1936, as the base, carved out a constitution which is federal with two levels of governments, the centre and the state operating on the people. The true nature of federalism in the constitution has been a matter of debate among scholars. It is not proposed to go into those differing views. On the other hand, it is suggested that there is no absolute federal principle in any of the world’s federal constitutions. A cursory examination of the federal constitution of the world would reveal how much they differ in numerous features and how difficult it is to find in them, a common thread which can be characterized as the basic feature of federalism. As has been appropriately said,
If there is such a thing as a strict, pure and unqualified federal principle, then the hard fact that there are no federations and no federal constitution’s." The founders in fashioning the constitution had not observed with any abstract federal design or dogma, but the founders gave to the country an instrument which is workable and meets the diverse needs of the country with different culture. Undoubtedly, there is conscious tilt in favour of the centre.

The main purpose was to create a strong central government which would unify the country into a homogenous nation out of the various religious and linguistic groups. Partition of the country had left its scars on the process of constitution making. In the words of Dr. Ambedkar, "the aim was to create a constitution which would be unitary or federal according to the exigencies of the situation." In spite of the clarification given by Ambedkar, the confusion and controversy seem to have persisted amongst scholars regarding the nature of Indian political system. The use of the term ‘Union’ instead of ‘federation’ in the constitution has led to the question. Would it be not more appropriate to describe Indian polity as ‘unitary’ rather than ‘federal’? It is true that our constitution does have a number of unitary features which give over-riding powers to the centre. Nevertheless, it has also to be recognized that the constitution does provide for a federal structure.

Every federation evolves the relations between the union and the states keeping in view the historical forces and the socio-economic factors. Similarly, the constitution makers have evolved a constitution consistent with expediency and the requirements of times, all the same without losing sight of the historical setting. Nowadays almost every federation in the world feels the necessity of a strong centre. Even in the United States, the centre asserted its supremacy and
tried to enforce its laws through its federal powers within the framework of the
constitution on the ground that the disturbance in the states was likely to render
the federal responsibility of ensuring inter-state trade and commerce and
communications ineffective and futile. In every federation we find this type of
growing trends favouring centralization. At the same time, the centre should
not become too strong so as to make the states dependent on the centre for
their honourable existence. Indian federation possesses the best of both the
federal and unitary forms of governments. Definitely the Indian constitution
satisfies the characteristics of a federal state. But by deliberate effort the central
government was made stronger. The exceptional powers of the centre are to be
exercised only in times of emergency that too, in accordance with the
constitution. The constitution should live to the circumstances and should
function in tune with the circumstances. For that reason, the centre was armed
with more powers so as to tackle uneasy situations, strictly, sincerely and
selflessly. Even though centralization has its own disadvantages, there is no
denying the fact the states should not be reduced to the position of slaves and
parasites, and they should be allowed to function independently of the centre at
least in their authorized spheres. It is possible when the ruling party ceases to
function as an extra-constitutional agency and the opposition parties are united
at least with regard to the maintenance of rights of the states under the
constitution. It is apt to conclude this discussion here by remembering what
Prof. Bannerjee said, "Indeed the unitary elements in our constitution are great
safeguard against any possible operation of the force of disintegration in the
country. Thus, they are rather ultimate controls of ensuring efficiency and
stability to the working of its constitutional machinery."
II Institutional Issues:

The Institutional Issues are further categorized into two aspects viz.,

1) The Office of the Governor.

2) The Bureaucracy.

1) The Office of the Governor:

The initial fifteen years after the constitution came into force saw hardly any controversy about the status, role and functions of the Governors. It was only since the Fourth General Elections in 1967 that the role of Governor became a matter of public debate and the institution of Governor has been subjected to increasing stresses and strains, not anticipated at the time of framing of the constitution.

Each state in India has a Governor and as per Article 154 all executive powers are vested in him. These powers are to be exercised by him either directly or through officers subordinates to him in accordance with the constitution. Under Article 156, though the Governor holds office during the pleasure of the President, the period is for a term of five years. Article 163 provides for a council of ministers with the Chief Minister at its head to aid and advise the Governor in the exercise of his functions except in so far as he is by or under the constitution required to exercise his functions or any of them in his discretion. Under Article 164, the Chief Minister to be appointed by the Governor and other ministers have to be appointed by the Governor on the advice of the Chief Minister. The council of ministers has to be collectively responsible to the legislative assembly of the state. Article 166 lays down that all executive actions of the government of a state are to be expressed to be taken in the name of the Governor. The Governor under Article 168 forms a
part of the legislature. He summons from time to time one or both houses of the legislature and he has also the power to prorogue the legislature and dissolve it. He may address the legislature. Where a bill has been passed by the legislature, it has to be presented to the Governor and the Governor shall declare either that he assents to the bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President.

Under Article 356 which forms part of the emergency provisions of the constitution, the Governor is required to send a report to the President about the failure of constitutional machinery in the state. On the report of the Governor, the President may assume to himself all or any of the functions of the Governor of the state and all or any of the powers vested in or exercisable by the Governor or any body or authority in the state other than the legislature of the state.

Our constitution makers felt that the Governor should be a bridge between the centre and the state [but not at the cost of the representative government in the state] a task which is enjoined upon his office as much from the discussion in the constituent Assembly as by the written provisions which are found in Article 355 which expects of him to ‘ensure that the government of every state is carried on in accordance with the provisions of this constitution.’

The same sentiments were echoed by the Administrative Reforms Commission, set up to review centre-state relations in 1960:

The government functions for most purposes, as a part of the state apparatus but he is meant, at the same time, to be a link with the centre. This link and his responsibility to the centre flows out of the constitution mainly
because of the provisions that he is appointed and dismissed, by the President.... The constitution thus specifically provides for a departure from the strict federal principle and it is relevant to observe that this departure is not fortuitous or casual..... It is clear, therefore, that the constitution-makers did not intend the Governor to be only a component in the apparatus of governance at the state level. They meant him also to be an important link with the centre.59

This meant that the Governor has to act in a dual capacity as constitutional head of the state as well as a representative of the centre. This duality of role is an important and unusual feature of the constitution which makes the role of the Governor really a very difficult one. The Administrative Reforms Commission commenting on the dual role said, “The holder of this office is not required to be an inert cypher and that his character, calibre and experience must be of an order that enables him to discharge with skill and detachment his dual responsibility towards the centre and towards the state executive of which he is the constitutional head..... It would be wrong to emphasize one aspect of the character of his role at the expense of the other and successful discharge of his role depends on correctly interpreting the scope and limits of both.”60

In the area of centre-state relationship, the Governor has been given specifically two functions by the constitution where he is to act in his own discretion. One, under Article 200, the Governor can reserve a state Bill passed by the state legislature for the consideration of the President. Here the role of the Governor in centre state relations is a crucial factor. The constitution nowhere requires that the Governor in making such a reference act on the advice of his council of ministers. As mentioned earlier, the Governor has a dual role as the constitutional head of the state as well as nominee of the central
government. In the past it has been the practice that with few exceptions, all the Governors have been selected from the ranks of the political party in power at the centre and frequently politicians defeated at the polls were given the safe haven of gubernatorial posts. Though the Governors are supposed to be politically non-aligned, they remain basically partymen watching the political developments in their states. In such a situation they may not heed to the advice of their state council of ministers about referring to the President, state legislation prejudicial to the party.  

The question may arise as to whether a Governor can reserve a Bill for the assent of the President when such reservation is advised against by the state cabinet. This issue gains added significance in situations where some states are controlled by parties in opposition to the party in power at the centre. This issue whether the Governor can reserve a bill for Presidential assent when advised against by the state government has to be examined from the dual role of the Governor. The Governor as the nominee of the centre has to fulfill certain obligations. Consequently, it may be reasonable to presume that he can exercise his personal discretion, irrespective of the advice of the state government, in referring a Bill to the President. No norms have been laid down by the constitution for the exercise of discretion by the Governor in this matter. However, in the interest of amicable centre-state relations, the Governor should exercise his discretion only in exceptional cases when in his independent judgement, he feels that the Bill will be against the interests of the relevant state or the country as a whole or if in his opinion an important federal or political question is involved.

Under Article 356 the Governor can make a report to the President recommending presidential rule to the failure of constitutional machinery in the
state. In this matter the Governor acts in his own discretion. President's rule has been imposed on the states over hundred times and most of them has been normally on the reports of the Governor. A survey of the manner in which the presidential rule has been imposed in the states on the reports of the Governor leads to the impression that the Governors have not often acted in a neutral and non-partisan manner but have acted to serve the political ends of the party to which they owed their allegiance.

Sarkaria Commission which was appointed by late Prime-Minister Mrs. Indira Gandhi in the year 1983 under the chairmanship of Mr. Justice R.S. Sarkaria, also made specific recommendation on the role of the Governor.

The doctrine of pleasure vis-a-vis the Governor does not mean a licence to deal with him arbitrarily. A conscientious Governor cannot be expected to send reports pleasing to the centre about the functioning of the state government. The role of the Governors is particularly unenviable in states, ruled by a party different from the ruling party at the centre.

II. The Bureaucracy:

Points to be discussed here are, neutrality of service and formation of new All India Services. It may be argued that one party dominant system has been dysfunctional to the neutrality of civil servants and multiparty competitive situation may restore the balance in its favour. One may, however, caution that neutrality among parties should not be confused with value-neutrality. While the former refers to programmes and policies of parties, the latter relates to cardinal constitutional values of democracy, secularism and social justice. The basic dilemma facing Indian political system is how to socialize the civil
servants into cardinal constitutional values and yet make them neutral in the programmatic sense.

Another issue of vital importance is the question of the formation of All India Services and the state's general indifference, or even opposition, to such a move. Although it is not necessary under the constitution, yet it would go very far in developing centre-state amity if a healthy convention is developed according to which the state's consent may be sought whenever a new service is to be constituted.

The controversy raises the fundamental issue of the role of All-India Services in a federal system. The point at issue precisely is whether these are relevant in a federal polity where the respective areas of jurisdiction of the centre and the state governments have been demarcated through the instrumentality of the union and state lists.

III. Article-356: President's Rule:

Article 356 provides for imposition of president’s rule in states to combat a situation in which the government of the state, cannot be carried on in accordance with the provisions of the constitution. This Article has become most important irritants in centre-state relations.

The expression, “in accordance with the provisions of constitution”, is ambivalent and vague. Even the framers of the constitution felt it to be so, and questioned Dr. Ambedkar about the meaning. Dr. Ambedkar however, evaded answering the question by resorting to legal sophistry. The constitution of India is rightly called 'lawyer's paradise' because it is replete with more than one such evasive statement which makes it vulnerable to various interpretations.
Now the question arises, what is the constitutional machinery the failure or imminent failure of which the President can deal with under Article 356? Is it enough if a situation has arisen in which one or more provisions of the constitution cannot be observed?

The 'failure of the constitutional machinery' might mean a situation when the Governor of a province is unable to find a council of ministers [Articles 163 and 164] to aid and advise him. This provision had precisely this implication in section 93 of the Government of India Act, 1935 from where it was originally lifted. The meaning of the term; In accordance with the provisions of this constitution may broadly include the following:

i) Political breakdown and political deadlock:

This is a point which requires careful analysis. A political breakdown can happen when no ministry can be formed or the ministries that can be formed are so unstable that the government actually breaks down, or where a ministry having resigned, the Governor finds it impossible to form an alternative, government or where for some reason or the other the party having a majority in the Assembly declines to form a ministry and the Governor’s attempts to find a coalition ministry able to command a majority have failed.

ii) When the party alignment in the state is such that no stable government can be formed.

iii) When the breakdown occurs owing to the ministry in the state refusing to follow the directions of the centre.

iv) There may be physical breakdown of the government in a state for instance, when there is a wide-spread internal disturbance, violence or revolt by the state, or external aggression or for some reason or
another, law and order cannot be maintained or disturbance and chaos occurs.

v) There is another contingency of economic breakdown. For instance there may be a state where the ministry is all right, but it wants to make itself popular by reducing or cancelling all taxes and running its administration on a bankrupt basis. Instead of paying their government servants and meeting their obligations the state goes on accumulating its deficits.

vi) When the state’s economic plans may be contrary to the economic programmes of the centre, central imposition of its economic language or prohibition policy on a recalcitrant state may precipitate a constitutional crisis. Gross misconduct and maladministration may also necessitate the promulgation of Article 356 in order to uphold the integrity and supremacy of the constitution.

vii) When the ministry is absolutely corrupt and is misusing the machinery of the government for dishonest purposes but it firmly saddled in power backed by a comfortable majority.

viii) Where a Ministry, although properly constituted acts contrary to the provisions of the constitution or seeks to use its powers for purposes other than the ones permitted by the constitution.

ix) There may be mass violence with the sympathy of the party in power in the state.

The other circumstances that may lead to political instability and breakdown of the Parliamentary system of government are-

X) a) Defection by the members of the legislature.
b) Passing of no-confidence motion against the council of ministers.

c) Resignation of the Chief Minister for various reasons.

d) Absence of legislature in the newly formed states.

e) Public agitations in the state leading to instability in the administration.

The persistent abuse of powers under this article has been severely criticized as infringe upon the federal nature of Indian polity. It has been aptly said that it has reduced the states to the position of sub-ordinate organizations rather than equal partners in a federation.

In spite of all this, Sarkaria Commission has favoured the retention of this article, because if this article is abolished, the centre would not be able to intervene even when there is utter chaos and breakdown of the constitutional machinery in a state. However, the commission has suggested some steps to ensure that this extraordinary power is used by the centre on rare occasions, when all available alternatives fail to prevent or rectify a breakdown of constitutional machinery in the state. It has been recommended that dissolution of the assembly should be endorsed by the Parliament. It has also been recommended that before taking action under Article 356, a warning should be issued to the errant state, in specific terms, that it is not carrying on the government of the state in accordance with the constitution. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences, and in a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the assembly.
President’s rule under Article 356 is a stop-gap arrangement in our political system. It is an arrangement that provides for a smooth shift of power from one individual to another, from one group to another in the same political party and from one political party to another political party. In terms of political reality Article 356 is a political instrument that brings about and ensures a smooth shift of power. It is a purely transitional and peaceful change of government. It is a valuable instrument. However, it is valuable only when it is operated with certain restraints. These restraints are to be decided by political norms or constitutional conventions which are necessary for the proper functioning of any constitutional or political system.

Eight cases of failure of constitutional machinery under Article 356 in Punjab and 75 cases of failure of constitutional machinery in other twenty one states of India, till 1987, took place in India.

In fact human nature being what it is, it well nigh impossible to expect the cabinet ministers at the centre to rise above party considerations and reach a dispassionate evaluation of the situation and act accordingly. The President is to be guided by the aid and advice of the council of ministers at the centre. The central government, like all other governments, being a party government could not be expected to be altruistic for success in the political arena which brooks no philanthropy.

In conclusion, the president’s rule should, perhaps, be used as a last resort. Its frequent use or misuse made one of the framers of the constitution remark: “If Ambedkar would have been alive today, he would have seen himself that it is not mending or amending the constitution but ending the constitution.”63
IV. Inter-State Disputes:

The other functional tension areas are, more approximately, the areas of inter-state conflicts rather than cases of centre-state disputes. The centre's involvement in these disputes is more as an arbitrator than as an interested party and that it thus gets caught in inter-state crossfires. Such cases relate to food policy, location of heavy industrial projects, language policy inter-state river disputes, or inter-state border questions. The disputes manifest themselves not in a movement away from the centre but in a concentration of conflicting pressures on it, which cut across party lines. According to Article 263 of the Indian Constitution, the President may appoint an Inter-State Council in public interest. The duties of such a council will be to inquire into and advise or dispute between the states, to investigate matters of common interest for two or more states, and to make recommendations regarding co-ordination of policy and action of any subject.

For example, the matter of location of a steel plant assumes the shape of an inter-state rivalry to have it located in a particular state, not withstanding the fact that the techno-economic considerations may dictate its location elsewhere. The question really boils down to a competition not only between congress and non-congress states but even among non-congress states themselves on the one hand and among congress states themselves on the other. Similarly when Kerala clamours for more food supplies, it is demanding more of national cake at the cost of some other state or states. In an attempt to secure more supplies from the centre, when it resorts to an agitational method like a strike, it is not only reacting to the centre's unsympathetic consideration of its demand but also to its so called generosity to a sister state.
Now take, for instance, the Narmada dispute. It was certainly not the then Chief Minister G. N. Singh’s complaint that the centre was appropriating an unduly large share of the Narmada waters. What haunted the Chief Minister, instead, was that Gujarat might get more than it should as a result of the centre’s assessment of resources and needs. Similarly, in inter-state border dispute if Maharashtra and Karnataka use pressure tactics against the centre it is obviously for compelling it to give a decision in favour of one and not the other. Quite in a similar tone, the language question is not really so much a dispute between the centre and states, as in reality it is a competition between Hindi and non-Hindi states for a share in the administration at the centre.

V. Financial Relations:

Another cause of tensions between the centre and the states are the nature of financial relations between the two. Under the scheme of the division of financial resources, the centre has come to acquire a lion’s share. This has made the states completely dependent on the centre for meeting their financial needs. Moreover, there has been a general complaint that the centre had not been sharing taxes with them in the spirit of the constitution. It has also been alleged that under the existing system of allocation of funds the rich states got more and poor states less, resulting in an ever widening gap.

This control over the finances has given the centre a lever to manipulate the working of state governments. To some extent this has been helpful in ensuring uniform development of different states. But the problem has been that the centre has been exercising its powers in a discriminatory fashion. That is why the Sarkaria Commission has recommended that the states be vested with greater revenue raising powers. It has further suggested that the centre should have informal consultations with the states in the formulation of terms of reference of the Finance Commission.
Further Sarkaria Commission recommended to constitute a sub-committee of finance of the standing committee of NEDC [National Economic and Development Council] consisting of union finance secretary and the finance secretaries of various states and union territories. This body will report to the standing committee of NEDC. Since planning commission would be providing the secretariat support to the NEDC, the same may be extended for this body also.

The centre is in a position to dictate to the states both the size and priorities to be contained in the state plans whether these suit them or not. Thus a reappraisal of the prevailing system of allocation between the centre and states has been demanded.

VI. Planning Issues:

The process of planning has also caused strains in the centre-state relations, as the emergence of planned development has concentrated all power in the hands of the union, with the Planning Commission acting as a limb of the union government.

The states feel all the more handicapped before the planning commission because they do not have Planning Boards of their own to come out with crystallized and technically viable thinking on state plans. In the same way the National Development Commission is looked upon as a lame duck dittoing body.

The comprehensive sweep of the Planning Commission set up under the current powers over planning has also operated to the advantage of the centre. Many schemes of the state governments require the clearance of the Planning Commission. It interferes in matters which are purely in the state list. If the
state does not accept a scheme, recommended by the planning commission, it loses the central aid. This is an indirect method of penalizing it. In certain fields, however, states welcomed the co-operation of the centre. But it goes without saying that planning process has undermined state autonomy.

The creation of the National Development Council in which the Chief Ministers are represented has failed to give the states due role in planning process. The N.D.C which finally decided the structure of the plan is no more than a body that ratifies the decision which had been made by the centre on the advice of planning commission.

The Sarkaria Commission report has suggested that the National Development Council [National Economics and Development Council] should have a constitutional status under Article 263. The NEDC should emerge as the highest political level inter-governmental body to give direction and thrust to development. The Planning Commission should operate under its guidance. If this recommendation is accepted, it will be neither necessary nor desirable to provide representation to the states on the planning commission. Further, Sarkaria Commission recommended state planning boards to perform similar functions for the state government as Planning Commission does at the national level.

By way of an overview of financial-cum-planning issues it could be said that the basic issue here is how to bring about a balanced partnership between the union and the states in nation building activities within the confines of centrally planned development, reconciling national priorities with local needs on the one hand and balanced national development with regional pressures on the other and ensuring the distribution of national monetary cake in a manner which ensures equity, besides encouraging the states to economise on their own.
VII. The Use of Para-Military Forces by the Centre in the States:

Under the constitutional division of powers between the centre and the states, maintenance of public order is the primary responsibility of the states and they have their own institutions and agencies. The states have their own police department and they utilize their own ordinary police for the maintenance of law and order as laid down in the various state police Acts. Besides the ordinary police, there are the reserve police forces which are maintained on para-military lines and which are ordinarily held in reserve for use in emergent situations, in order to limit the use of the military in aid of the civil power to the greatest possible extent.

In addition to the existing police organizations of the states, the centre has also raised certain Para-military organizations such as Central Reserve Police Force [CRPF], Border Security Force [BSF], Central Industrial Security Force [CISF] for ensuring law and order in the states. The use of such parallel, forces by the centre in the states is a typical feature of the Indian federalism. The administrative Reforms commission had supported such use. In its report on 'centre-state relations' it observed:

The Central Reserve Police Force and Border Security Force are armed forces raised by the union to meet the needs of the security of the country, both external and internal. In the circumstances use of the armed police forces of the union in aid of the civil power of a state is perfectly constitutional. It is also clear that such aid can be provided at the request of the state government of suomoto. The question whether such aid is needed must obviously be matter of judgement by the centre.

Such use of the Para-Military Forces by the centre to protect law and order, an exclusive responsibility of the states, has been considered to be a serious inroad on state's autonomy.
The trend of centralization in this sphere reached its apogee during the emergency with the constitution [Forty-second Amendment] Act, 1976 incorporated Article 257A to the constitution empowering the central government to deploy any armed force of the union or any other force subject to the control of the union for dealing with grave situations of law and order in the states. These forces were to act in accordance with the directions of the central government and were not to be under the superintendence or control of the state governments. The states resented this provision vehemently which, interalia found expression in the memorandum put forth by the west Bengal government in 1977 during the Janata party rule at the centre. The Memorandum advocated the scrapping of Article 257A, consequently, the constitution [Forty-fourth Amendment] Act, 1978 enacted during the Janata rule deleted this provision with effect from 20, June 1979.

With the deletion of Article 257A the states quo ante has been restored as regards the use of Para-military forces. The centre may have the right to send CRPF in consultation, much less with the concurrence of the state government. However, it is essential to remember that for purposes of centre state amity and co-ordination for the success of centre’s efforts, voluntary consultation and co-operation are to be preferred to unilateral action. Despite the recent changes in the law relating to CISF, it would be both necessary and desirable that the CISF, units maintain close liaison with the state police at the protection of vital installations is neither the concern of central government alone nor of state governments, but of both.

Apart from these above mentioned factors/trends the following new trends can be seen in the practice of Indian federal system.
I) Refusal or resentment by certain state governments to carry out centre’s directions issued under Articles 257 and 365 of the constitution not being in the interest of the ruling party in the state.

II) Socio-cultural and regional pressures of state polities.

In conclusion, in brief, is the story of basic issues and critical tension areas in Indian federal system which though, more often than not, prior in existence to fourth general election, have got accentuated thereafter. A descriptive hypothesis which perhaps best sums up the present day situation is that co-operative federalism in India having lost its support base in the congress system in search of a new anchorage amidst pressures of democracy, national development, regional growth and state autonomy. The native may well discover that the constitution itself is the natural abode for the proverbial home-coming as also for reconciliation of competing claims and right ordering of loyalties.

On the concluding day of the proceedings of the Constituent Assembly on 25th November 1949, member after member reiterated that, “the success of a constitution, even of most meticulously written constitution, will depend not so much on its language as on the spirit in which it is worked. It depends on us, the people, to make it or mar it.”

The concluding address of Dr. Rajendra Prasad has ringing appeal and an abiding relevance today. ‘We have prepared a democratic constitution’ he said, “but successful working of democratic institution requires in those who have to work them willingness to respect the viewpoints of others, capacity for compromise and accommodation. Many things which cannot be written in a constitution are done by conventions. Let me hope that we shall show these
capacities and develop those contentions..... If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective constitution. If they are lacking in these, the constitution cannot help the country...... India needs nothing more than a set of honest men who will have interest of the country before them."
NOTES AND REFERENCES


2. Ibid.


7. Ibid.


13. Ibid.


22. Ibid.


26. Ibid., p. 777.

27. Ibid., p. 849.


29. Ibid., p. 539.

30. Ibid., p. 629.


32. fn 41 and 42.

33. fn 45.

34. fn 47.

35. fn 46.


42. Ibid., pp. 281-84.

43. Ibid., p. 279.

44. Ibid., p. 280.


46. The Maximum limit of the Professional tax has been raised from Rs. 250 to Rs. 2500, by the constitution [60th Amendment] Act, 1988.


49. Ibid., p. 318.

50. Ibid., p. 318.

51. Ibid.,

52. Ibid., p. 327.


60. Ibid, at 272.


65. Ibid., p. 933.