CHAPTER - III

CENTRE-STATE RELATIONS -
THE INSTITUTIONAL STRAINS.
Forty four years ago when we entered our 'tryst with destiny' we undertook an essentially political journey in which the party system and the party politicians were to occupy centre-stage. And rightly so. The alternative was to hand the reins of power to a colonial bureaucracy, a law and order machinery and the armed forces. As a nation we owe a lot to the political leadership that not just brought us independence from colonial rule but also laid a powerful institutional basis for building a coherent democratic process which engaged the vast complexities and intricate diversities of this ancient land and civilisation into a massive experiment of democratic nation-building. Today we feel that we are being let down by this very class of our country men. Men and women of talent, commitment, vision, and perspective have since left politics. "Nowhere has Gresham's Law - of the bad coins driving out the good ones - operate more than in the political arena. There is urgent need to reverse the Gresham's Law. Without that there is no future for Indian democracy. And without democracy there is no future for India."¹ India has been fortunate in the length

¹ Rajni Kothari, "Decline of Institutions", The Times of India (New Delhi), 10 August 1987.
and continuity of its process of institutionalization. A long colonial rule during which the broad lines of its territorial and administrative structure were laid, a fairly long nationalist movement and the unhampered rule of the Congress party over two decades had all consolidated the institutional framework of democracy. Prime Minister Nehru played a critical role in giving to the country and its institutions strength and character. By symbolising nation’s unity in one man for such a long time, India avoided the painful convulsions through which new nations had to pass. Nehru provided the country’s institutions with sufficient times to strike roots, and himself worked to that end by being their chief operator. But once the eminent personalities of freedom movement were out of scene, the institutions to which they gave birth did not mature in the absence of suitable consensus.

Due to the rise of personalized politics, we have witnessed an erosion of the political institutions. The essence of Indian political institutions today is that "thanks to self-centred and cynical leadership on all sides we are heading towards conditions of near anarchy."² There are series of indicators towards this anarchy. First, there is massive out-break in communal violence. Second, there

is fairly large and determined onslaught of the terrorists (which must be distinguished from the communal violence). Third, there is a sharp decline in the credibility of government, both of the individuals occupying seats of power and of the formal apparatus of the State. And, fourth, the party system, through which the formal State apparatus is supposed to hum and tick is in deep fissures, both due to the emergent schism within the Congress and due to the newly crystallizing polarisation within the opposition, together paralysing the political process. Though Indian character and social ethos had very strong anarchic strains but it also had a strong instinct for institutional order. "The challenge facing the Indian political institutions in the immediate future," observed Rajni Kothari in 1980 "is to provide scope to various elements in the system so that the instinct for institutional order gets the better of anarchic strain." But the situation has worsened over the years. The bearers of the state power having not just neglected but in fact deliberately undermined institutions through which social diversity, political and ideological dissent and class conflicts could be both channellized and chastened.

The process of deinstitutionalization also has another reason. Though the politicians have a lot to answer for the weakening of the democratic institutions, we must pause to look into the "logic of the system" to see that the current malaise is to a large extent the result of the working out of this logic. We cannot forget that the vast changes have taken place in the outlook and recruitment of political elites in the last four decades and more. The first generation of political leaders took an active part in the freedom movement and so could always look at problems from a national perspective. Even otherwise, ethnic and caste lobbying in the earlier days of independence were not so well organized. Today the very circumstances in which young people join a party and make their mark at the district and State level fosters for a more parochial outlook. What is more, parties whose base is confined to only one state or one communal or caste constituency have no reason to cultivate a national outlook. Parochial disease has by now come to infect the nerve centers of many of the national parties which have acquired a stake in specific communal and caste constituencies. This is indeed the new bane of national politics. BJP has gone on record when it played the Ayodhya temple card for all it is worth and Janta Dal was out to grab the backward caste vote bank,
it is obvious that there is not any kind of national consensus. The politicians may have a lot to answer for this malaise, "but they do not impose themselves on the system. In a way they are themselves the products of a system which is in some ways beyond their control. The forces which make political discourses go tabloid are in any case more powerful than they."  

Centre-State relations form the most crucial part of the institutional mechanism in this country. By eroding this mechanism, the Centre-State relations has been subject to more and more pressures and strains. Continuous centralisation of power in hands of authorities in New Delhi, large-scale violation of norms, widespread corruption and internal imbalances within the centralized power elite, have further complicated the Indian political setup. The kind and degree of manipulation that the political elite indulged in to undermine both the Judiciary and the Parliament, with the help of Bureaucracy have upset the horizontal balance of power between the Executive, Parliament and the Judiciary. Two reasons have contributed to the erosion of these institutions. First, there was systematic undermining of these institutions under the impact of, on the one hand, a centralizing and, on the other hand, a

populist and plebiscitary model of democracy. For this, both the top leadership and the political functionaries operating at lower tiers have been responsible. Second, the earlier structure of both government and party had also proven unequal to the new challenges of a political process, which has moved beyond elite equation and has acquired a mass base. Consequently, the process of democratic politics in nation-state whose hierarchy became increasingly de-institutionalized necessarily led to a negation of democratic values. To give a few examples of the manipulations to erode the institutional mechanism on this country: First, the institution of Governor has been continuously misused to destabilize the State governments. In fact, the prestige of the office of the Governor has been lowered by deliberately appointing those persons who were discredit, rejected and thrown out of the political office. Second, the use of military and para-military forces against the wishes of Chief-Ministers has created a feeling of having forceful occupation of the State. Third, in matters of financial allocations, choice of investment projects, assistance for reallocation for the plans etc., the Centre has not always followed the set rules and often used its power arbitrarily to discriminate between one State and another. Fourth, in respect of inter-State disputes, instead of
amicably settling them, the Centre often involved itself in a way to perpetuate them. Fifth, in respect of the division of fiscal power and resources as provided by the Constitution, the Centre has resorted to manipulations which could not but have left the States with the feeling that the Centre was more interested in enlarging its financial control over the States first by denying them the right kind of fiscal resources and then by giving them money by way of charity. "The crux of the problem is neither constitutional nor financial; it is political. It is doubly political in the sense of the destabilization of relations between the Congress government in the Centre and non-Congress governments in the States."5

"Federation is both a structure and a process. As a structure it comprises a set of institutions and instrumentalities created by the basic law of the country. It has, however, different slants and shapes, ranging from dangerously loose to extremely tight federation. As a process it includes operational relations between the general and regional governments and has, as Macmohan rightly emphasizes, "many gradations of tempo and

5. J.D. Sethi, "Politics of Centre-State Relations", Commerce (Bombay), 13 August 1983, p.216. He was not a member of the Planning Commission in 1983.
destination." Federalism, both as a structure and a process is dependent upon the patterns of social differentiation and the working of the party system. Both the factors, the patterns of social diversity and the operation of the party system, determine the operational structure of federalism. The interaction between the party structure and the federal system is evident in the working of the party system in the Indian federation. With the decline of one-party dominance and the emergence of multiple centres of mass appeal and political power, the question of Centre-State relationship has again assumed urgency.

Immediately after the passage of the Constitution, political development of the country took place mostly in the form of institutionalization in a manner that was to help grow India as a nation state despite diversities. An institutional arrangement, however, needs refurbishment to meet the requirements of the social, economic and political change. Things remained in original shape with the Congress, Nehru and election coinciding with each other but started getting deshaped when the three did not coincide and systematic change required institutional refurbishment. Post-Nehru India has shown weakened leadership, decline of the Congress,

6. Amal Ray, Tension Areas in India's Federal System
ascendancy of opposition and the growth of centrifugal pressures within the Congress. There has been a growth of a sense of self-consciousness and self assertiveness of the regional governments. "Thus a new political environment of Indian federalism was created. What was, however, really important from the standpoint of Centre-State relations was not merely the fact of replacement of Congress by the non-Congress political parties in several States, but the ideological position, political strategy and support base of the new government."  

The Sarkaria Commission had taken considerable pains to underscore the validity of the federal system that has evolved over the years under a dynamic Constitution. Unfortunately, for want of willingness to shed powers on the part of Central leaders, the Report has been in the cold storage. After ninth Lok Sabha elections, when the regional parties like the DMK, the Telgu Desam and AGP had a greater say in the dispensation in Delhi, the possibility of its implementation brightened up. Hence, in accordance with the recommendations of Sarkaria Commission, Prime Minister V.P. Singh offered to institutionalize the procedure for regular consultation between the

7 Amal Rav. p 30.
States and the Centre by setting up an Inter-State Council as recommended under Article 263 of the Constitution. The need for such a body was recognized by the Constitution but it was not constituted all these years. The first meeting of Inter-State Council was held on October 10, 1990. A ministerial panel headed by then Home Minister, Mufti Mohammad Sayeed was also set up to review the Centre-State relations in the light of the Sarkaria Commission Report and to suggest changes with a view to strengthening the federal structure. This was one of the important commitments made by the Front in its election manifesto and had been demanded by several political parties which supported the V.P. Singh Ministry.

Due to the altered political scenario in the country after the general elections in May 1991, and the strengthening of secessionist tendencies in the three border States of Assam, Punjab and Jammu & Kashmir, the role of the Sub-Committee of Inter-State Council, set up after the first meeting of the Council in October 1990, assumed crucial importance. The Government at the Centre could no more afford to treat the States in a cavalier manner. In the very first meeting of the Sub-Committee of Inter-State Council, held on 26th September 1991, the Home Minister, S.B. Chavan, emphasized the need of strengthening the institutional framework for Centre-State and inter-
State cooperation and coordination and on the observation of conventions and norms. The Home Minister said, "the Constitution is to a large extent what we make of it. Both the Union and State Governments have to make an effort to improve the Union-State relationship." As the convenor of the Sub-Committee, S.B. Chavan was careful not to strike a discordant note at any stage and generally there was spirit of accommodation and discussion were free of any acrimony or attempt to score points. After a long and unpleasant history of reluctance, the Centre has finally agreed to loosen its hold over the States and impart the necessary momentum towards a more federal, richly plural and stable arrangement.

Decline of institutions has become a favourite theme of academicians. Rajni Kothari talks of "decline of Institutions," H.K. Dua says that the institutions are showing "signs of decay" and according to Madhu Limaye, Parliament is "no longer a watchdog". Iqbal Narain considers the "institutional issues" as one of the major

conflict areas between the Union and the States. "The present state of affairs in the country whose malaise is well known to the national intelligentsia is attributed to.....the flaws in and the failures of the political institutions......"13 We confine ourselves here to the study of those institutions whose decay has caused tension in the Centre-State relations in recent times.

THE GOVERNOR : Governorship has become an extremely difficult and delicate job in the changed political complexion of the country, An institution of crucial importance, on whose impartiality and integrity the autonomy of the State and the soundness of Centre-State relation depends is the Governor of a State in the Indian Union.14 An office which suffered a relative eclipse during the pre-1967 era of one party dominance suddenly shot into both importance and controversy. For the past few years, it seems, not only controversy is chasing the Governors but some Governors are themselves chasing controversies. From Dharam Vira’s decision in 1967 to dismiss the first United Front Ministry in West

Bengal, which was widely applauded, to Ram Lal's exercise of the same power which was almost universally condemned and quickly reversed, the saga is both sordid and oft told. Recent incidents of the resignation and removal of two Governors, viz, Surjeet Singh Barnala and Mohammed Yunus Saleem in February 1991, have again focussed the attention on the Governor's office. The issue refuses to die.

In order to have a clear understanding on this issue, it is necessary to trace the circumstances leading to the adoption of the provisions in the final Constitution relating to the Governor. The question of choosing Governors went through a number of stages\textsuperscript{15} in the Constituent Assembly. Initially the idea was that the Governor should be directly elected by the people of the State. The Constituent Assembly, however, decided to provide for the nomination of Governor by the President and thus rejected the idea of allowing either the people of the Province or the State Legislature from having influence in selection of the Governor. The decision to provide for the nomination of Governor by the President was a step taken by "the Constitution - maker's attitude following partition and the political development in the country since then. With the disappearance of the

Muslim League as a force in Indian politics and with the problem of the native states being satisfactorily tackled through their integration, the need for acquiescing in a loose federation with a weak Centre had disappeared. In fact, the need to introduce a Centre had disappeared. In fact, the need to introduce a centralist bias to avoid further disintegration in future and to check the separatist and centrifugal forces in the country was keenly realized. The decision to provide for the nomination of the Governor by the President was a step taken in pursuance of such a realization. "16 Jawaharlal Nehru thought that a process of election for Governor would encourage a "narrow, provincial way of functioning and thinking in each State. It would be better if the Governor was not intimately connected with local bodies but was a detached figure, acceptable to the State Government, no doubt, but not known to be part of the machinery."17 The proposal to change the method of election of the Governor to one of nomination by the President was moved on the ground "that in the interest of all-India unity and with a view to encouraging centripetal tendencies, it is necessary

that the authority of the Government of India should be maintained in fact over the provinces."\(^{18}\)

The Constitution-makers, thus, while disclaiming any ideas of making the Governor as an agent of the Government of India, have visualized the Governor to play the role of providing a link between the Centre and the Units. T.T. Krishnamachari said in his speech:

"I would at once disclaim all ideas—that we in this house want the future Governor who is to be nominated by the President to be in any sense an agent of the Central Government. I would like that point to be made very clear because such an idea finds no place in the scheme of Government we envisaged for the future."\(^{19}\)

Mahavir Tyagi was no less emphatic when he observed: "These Governors are not to be there for nothing. All we have to see is that the policy of the Centre is carried out. We have to keep the States linked together....... The Governor being the agency of the Centre is the only guaranty to integrate the various Provinces or States. The Governor must remain as the guardian of the Central policy on the one side, and the Constitution on the other."\(^{20}\)

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18. Speech of Shri Brajeshwar Prasad in moving the amendment to provide for the appointment of the Governor by the President, *C.A.D., VIII*, No. 11, p.426, 30 May 1949.


The Constitution in its various provisions, entails three facets of the Governor’s role. These may be categorised as:

(i) The Governor as the de-jure head of a State, operating normally under the system of parliamentary democracy;

(ii) as a vital link between the Union Government and the State Governments; and

(iii) as an agent of the Union in a few specific areas under normal times (Article 239.2) and in a whole array of cases in abnormal situations (President’s rule under Article 356.1)

"All these three facets have their perversions based primarily on the priorities and interests of the Union Government and the ruling party at the Centre. Ironically enough, such perversions—centrally inspired—go under the classification of 'discretion.'" 21

The controversy which has arisen in recent times concerning the Governor’s role and the manner in which he should function is largely due to this fact that the Governor holds his office during the pleasure of the President, which means that in terms of Constitutional practice, the Governor in a State is actually appointed by the ministers of the President and the Governor holds his office also during the

pleasure of the ministers of President. This imports into the structure of our Constitution a political element which gives rise to the controversies, which have been thrown into bold relief during the period following the general election of 1967.

The first instance which let loose all types of doubts and rumours about Governor's office occurred in Rajasthan where both the Congress party and the United Front claimed majority in the Assembly. The Governor, Dr. Sampurnand, was charged of having acted on the Centre's advice when he decided to call the leader of the Congress party to form the Government. "This was just a prologue to an array of events elsewhere in the country which were both challenging in their nature and crucial in the significant issues that they raised about the office of the Governor."

Iqbal Narain has highlighted the following issues about the role and position of the Governor in the scheme of Union-State relations:

(i) the question of the role differentiation of the Governor which amounts to asking what the Governor can do and what are the rational conventional limits of his situational discretion;

(ii) An allied question relates to the issue of balanced reconciliation of his dual role as Constitutional head of the State and as

22. Supra n.12.
an agent of the Centre;

(iii) The question of legitimate grounds on which a Governor can recommend breakdown of Constitutional machinery in state and consequent upon it a Presidential take over;

(iv) The issue of the method of his appointment and term of his office." 23

The institution of Governor, of late, has been in high focus. At times their appointment became controversial, at others their removal received wide criticism. The action of some of the Governors in the sensitive States has also come under flak for having favoured one or the other political party at the instance of the Central Government. Some have even been dubbed as agents of the Home Ministry. At the annual meeting of the Governors held on 30th July 1990, President R. Venkatraman described the Governors as "a vital link between the Centre and States. They are not just "ceremonial functionaries" but play the role of "sagacious counsellors" in relation to the Government." 24 He said that in States where there is President's rule, the Governors have to directly manage difficult situation. Political fluidity in some States put the Governor under "great strain" and it calls for exercise of their judgement with "care and objectivity" in the formation of Government. Similar

23. Iqbal Narain, Supra n.12.

24. The Hindustan Times (New Delhi), 31 July 1990.
views were expressed at the Conference of Governor held on 13th and 14th December 1969. Then also, the President in his opening address said that the Governors are only creatures of the Constitution and not the agents of the Centre. In early 70's the question which was being debated was whether the office of Governor is ornamental or purposeful? Nobody had any doubt that the Governor has a very important role to play, not only as a vital link between Centre and States but also to ensure the political stability in the State and the proper working of the Constitution, as the days of one-party domination were over. In 90's the question is again being posed, is the Governor merely a figurehead sending stereotyped reports to the President and the Home Ministry or is he an active philosopher and guide to the State Government? The role of the Governor in the present set up is specially important when the Central Government is not a majority Government and in States different political parties are in power.

The Indian Constitution spells out the role of a Governor as stating that that the executive power of the State shall be vested in Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Apart from the question of the provisions of the Constitution, the experience of the
political relationship between the Central and State
governments quite unambiguously reveal the role that
the Governor is meant to play, in resolving
contradictions that arise from time to time between
two levels of administration. There is only one
particular configuration relating Central to State
politics in which the Governor is no more than a
figurehead, and that is, when the State Government and
the Central Government are both ruled by the same
party, and, even more narrowly, by the same or similar
faction within the same party. “In all other cases,
he is either potentially or in actual fact meant to
play an interventionist role at the bidding of the
Central Government.”25 T.V. Sathyamurthy opines
that the Governor is in actual fact not merely a
detached spectator playing the role of the agent of
the President whose task is to maintain the dignity,
the stability and the collective responsibility of
the State Government. “He is a link in the “Federal
State” chain, but the essential character of that
chain should not be misunderstood, it is predomi-
nantly a political chain and the person who acts as the
link between the two unequal centres of power cannot
escape being partisan. His role is to take the side of

Development of the Power of the State*, Vol.I Centre-
State Relations: The case of Kerala, (New Delhi: Ajanta
the dominant Centre against an apparently recalcitrant State." 26 Andhra Pradesh Governor, Krishna Kant, while agreeing that Governor's post is a political post, said, "I am intensely politicl but one must bear in mind that being political does not mean partisan. Politics in fact is a noble art." 27 There are not many who will agree with this point of view. Governors, of late, have been openly partisan and have, thereby, violated the spirit of the Constitution and the canons of democracy.

In the present scenario, the role of Governor has come to be viewed as a device for an authoritarian Centre to curtail the autonomy of the States. The non-Congress(I) opposition parties opine, "the institution of Governor has been misused......the record proves beyond a shadow of doubt that, in most cases, the Governors have used their offices to serve the interest of the ruling party at the Centre ." 28

In 1967, Left oriented Governments were elected in the two States of West Bengal and Kerala and DMK also formed a non-Congress Government in Tamil Nadu. Later on, since 1980 more non-Congress Governments came

26. Sathyamurthy, Supra n.25.
27. Arti Bhargava, "Focus now on Governor's Role", The Hindustan Times (New Delhi), 31 July 1990.
into being. With the formation of coalitions and non-Congress Governments in the States, the Governors have been exploiting the ambiguities of the Constitution in appointment of the Chief-Ministers, dismissal of Chief-Ministers, recommending President's rule in the States and summoning, proroguing and dissolving the Assembly. Our past experience shows that the practice of inviting the leader of the single largest party or the leader of the largest united front formed before election has been followed only when the Congress party or the united front supported by the Congress party happened to be the largest, not otherwise.\(^{29}\) This proves that the Governors work as the agent of the party in power at the Centre. E.M.S. Namboodripad has commented that

\(^{29}\) For example, when the mid-term elections were held in Kerala on March 4, 1965, though the Communist Party was the largest, having a strength of 40 out of 133, yet its leader was not invited by the Governor to form the Government. Inspite of the fact that the leader of the Communist party publicly declared to do so; the Governor recommended the imposition of the President's rule. Again in 1981 election, in Kerala, the non-Communist parties formed a United Democratic Front and won a majority. The Governor of Kerala invited the leader of UDF to form the Government by passing the claim of the leader of the CPI(M) which was the largest party. In 1982, the Governor of Assam invited Gogoi to form the Government, though he had the support of only 48 members as against the opposition which claimed the support of 64 members. Eventually the Gogoi Ministry had to quit office without facing the Assembly. Governor of Tamil Nadu, S.L. Khurana asked Janaki Ramachandran government to prove its absolute majority of the total strength of the Assembly but later relented that it has only to demonstrate a majority of the members present. Governor, it was alleged, also gave time to Janaki Ramachandran to demonstrate a majority of Government on the floor of the House because high command at the Centre had at that time decided to favour her.
most of these Governors "are prepared to be as pliant as the unwanted Congress leaders in serving the cause of the all-India ruling party." 30

Exalted office of Governor, with an important function to perform in federal structure has been allowed to be debased and degraded for much too long. Ruling party in New Delhi, has undoubtedly and distressingly used Governor’s powers for the partisan ends. After the 1977 general elections, Janta Government set the precedent of dismissing Congress Ministeries in as many as nine States. Janta Government developed the astounding constitutional fiction that a resounding defeat of the ruling party in Parliament implied an equal lack of confidence in the State Legislatures too. When Mrs. Gandhi returned to power, she did to the Janta ruled States what the Janta party had done to the Congress-I ruled States. The second non-Congress-I Government headed by V.P. Singh developed the fiction that with a change in Government, the Governors must resign and it would be for the new rulers to decide who to keep and who to discard. "The Governor's office is now not the only element in the "patronage pool" but it is a part of the "spoils system". Every new Government at the

Centre, if it belonged to a different party, would in future sack the Governors whole-sale and fill the post with its own henchmen." 31. This theory greatly undermines the Constitutional status of Governor. Under the Constitution, he is appointed by the President by warrant under his hand and seal. Although he holds office during the pleasure of the President, his term is for five years. There is no provision in the Constitution for either the resignation of the Governor with the change in Government or for his transfer but these have been arbitrarily brought about by the Centre. The contribution of the third non-Congress(I) Government of Chander Shekhar’s to the degradation of the office of the Governor’s is that he has treated Governor only as an agent of the Centre. The circumstances under which Barnala was transferred to Bihar smacks of punishment. The Chander Shekhar Government has also ensured its place in constitutional history by dismissing the Governor of Bihar, Mohd. Yunus Saleem, for condemning the action taken by Centre in his address to the joint session of the Bihar Legislature. This is not the first time that the President has withdrawn his pleasure from a Governor. What makes the dismissal of the Bihar Governor especially objectionable is that

he has been dismissed for doing his constitutional duty. Yunus Saleem has stated that he has been dismissed because he did not yield to the Centre's pressure and sent an adverse report against the Laloo Prasad Yadav Government. Another reason for his dismissal was that he raised a voice to preserve the autonomy of a State. "...when the constitutional autonomy of a certain State is attacked it is but natural that the other States will feel the pinch because today if one State is the target tomorrow it could be another State." 32

It may be too late to expect the Central Government to abandon the tradition of treating the office of Governor as a sinecure for, among others, Congress party rejects. But surely it is not too much to demand that those active politicians who are banished to the glided cages called Raj Bhavan would have the decency to stay banished. The tendency so far has been that mostly the Governors misuse their powers to please their masters in New Delhi. Even the Sarkaria Commission clearly stated that the Governors in general "are unable to shed their political inclinations, predilections and prejudices while dealing with different political parties within the State. As a result, sometimes the decision they take

32. Mohd. Yunus Saleem in an interview with Kumkum Chadha in
in their discretion appear as partisan and intended to promote the interests of the ruling party in the Union Government......such a behaviour it is said, tends to impair the system of parliamentary democracy, detracts from the autonomy of the States and generates strains in Union-State relationship."^3^3

Governors have used their discretion by recommending President's rule under Article 356 in a partisan manner. In post-independence era we find that in 39 years, Article 356 has been brought into action no less than 82 times,"^3^4 when President's rule has been imposed to deny duly elected governments the right to govern. "Article 356 has been invoked with such frequency that State autonomy, the very life-breath of federal polity has become the plaything of infantile adventurism and political expediency by Central Moghuls. Although the safeguard of parliamentary ratification has been built into the provision, there has never been a single case where this vigilant sentinel has voided even the most blatantly mischievous misuse."^3^5 The Sarkaria


Commission has also in its Report referred to the malafide behind the exercise of powers as contained in Article 356 of the Constitution. "The proclamation of President's rule in Punjab in June 1951 and in Andhra Pradesh in January 1973 are instances of the use of Article 356 for sorting out intra-party disputes. The imposition of President's rule in Tamil Nadu in 1976 and in Manipur in 1979 are in the consideration that there was maladministration in these States."36 A closer study of the application of Article 356 in Tamil Nadu against Karunanidhi and MGR proves that this emergency provision is now a constitutional joke, a tool to win support for the Congress-I from other political parties.

Governors usually have an important role since their reports are the first steps for the Centre to act. The Article, of course, is wider but ordinarily Governors are obliging enough to furnish the required basis. It is unfortunate that even where independent advice should be tendered by Governors they have played secret politics. Law and order, misuse of power and corruption are the charges levied against the State Government to bring them under the President's rule. These are the pretext for the Centre for seizing power at the State-level.

36. Supra n.33.
Governor's, under Article 200, have allowed themselves a considerable latitude to temporarily or sometimes, in effect, permanently affect a veto to be exercised by the Centre. As per Sarkaria Commission Report, "between 1977 and 1985, some 1130 bills were reserved for the Centre, who withheld assent in 31 cases." A close scrutiny of the exercise of Governor's powers in the past, would reveal that the discretion of the Governor is inaccordance with the political thinking of the ruling party at the Centre. In recent years, the dignity of the office has been eroded to such an extent that the Government of Kerala had to write to the President to recall Mrs. Ram Dulari Sinha from the State. In Andhra Pradesh, Telgu Desam party and four non-Congress-I parties had threatened to go to court when the Governor Ms. Kumud Ben Joshi refused to approve the appointment of R.N. Aggarwal as the Lokayukta of the State. Situation has deteriorated to such an extent that the similarity of party labels is also no guarantee of smooth relations between the Chief Minister and the Governor. Tussle between the two constitutional functionaries of Bihar proved it in 1989.

E.M.S. Namboodripad demanded abolition of the post of Governor. He said that, "there is no need for

37 Commission on Centre-State Relations Report, p.151.
a separate office with the Raj Bhavan and other paraphernalia. Such a measure would remove an irritant in Centre-State relations—the Governor as the watchdog of the Centre—an institution which cuts at the very root of State autonomy in federal India."

Another Kerala Chief Minister, E.K. Nayanar feels that "the institution of Governor is not only redundant but also harmful for democratic Centre-State relations."  

BUREAUCRACY: Bureaucracy is another institutional area of tension between the Central Government and the States. Some discordant note are struck on their role, and their existence and functioning are seen as an erosion of State autonomy. "The points at issue are the neutrality of services and the formation of new All India Services." To this, one may add, "as to how to make the Civil Services an effective instrument of national development and how best to bring about a harmonious working of the political executive and the bureaucracy."  

38. Supra n.20, 105.
40. Supra n.12, 100.
Our administrative structure is a legacy of the British rule. The administration, the British left behind, was well enough in normal times. But an administration is as good or as bad as the Government it works for, and the administrative system the British developed was just about good enough for their purpose. Their overall purpose was the maintenance of British Raj and they were content to achieve this on the principle of minimum governance. Their administrative apparatus was thus the least that was necessary to sustain their rule and this least is what we inherited in 1947. Certain institutions which were tested and tried in the pre-independence period were accepted after independence and the concept of an All-India Service was attempted to be reconciled with the idea of federalism. An integrated, well-knit, All-India Service to manage important and crucial sectors of administration throughout the country was a legacy of the past and the framers of the Constitution accepted it.

In this old colonial system we injected a new element - politicians and political parties. Their involvement in the administration at different level varies. For example, at the cutting edge of the administration, such as the post offices, the railway

station or the state transport, politicians are not involved in day-to-day functioning. On the other hand, at the level of tehsil, sub-division or district, where administration assumes responsibilities for the implementation of socio-economic programmes, middle-level functionaries of bureaucracy and politicians come in direct contact. Sometimes it is fruitful cooperation; some other times interference; and in rare cases conflict and confrontation. As distinct from the administration in the field, most of the hierarchy within the secretariat is unaffected by the working of the political system. It is mainly at the senior position that civil servants have to work along with the political executive. This represents the interface of two institutions, viz., the political system and the bureaucracy. The changing relationship of the political executive and the senior civil servants, as evolved over the last four decades, has a direct bearing on the state of the administration and Centre-State relationship.

Thus, there were two significant changes on the attainment of independence: First, public men came into power and assumed office as ministers; and secondly, civil servants got increasingly involved in the implementation of socio-economic programmes. This greater degree of continuing interaction between the civil servants and politicians at different
levels of administration was a departure from the pre-independence character of the functioning of civil servants. The objective of governance changed from imperial to nation. But strangely enough, the administrative apparatus which we inherited was based on the principle of minimum governance. There were a couple of reasons for the survival of this set up which was the product of British interest. "The Congress which came to power at the Centre and in all the States found it convenient to function through the bureaucracy because it had no cadres having been more a movement than a party. Maintenance administration thus acquired the indispensable role of keeping thing going and soon came to be seen as important for holding this country together. Secondly, planning for development required the channelling of scarce resources into priority sectors and this provided new justification for economic controls to continue and even expand. Thus, in essence, neither component of the received administration changed, although both became geared to new objectives. The imperatives of development, however, led to a vast expansion of governmental activity with its inevitable concomitant of swollen bureaucracies at the Centre as well as in the States. Rapid growth thus became the distinguishing feature of administrative

Recruitment to the IAS (as a succession service to the ICS) is on all-India basis. An IAS officer is allotted a state where he is expected to serve under a State Government. No serious disciplinary action can be taken against the member of the IAS by the State Government without the concurrence and approval of the Centre. The officer is governed by the service rules made by the Central Government and these cannot be altered or interpreted to his disadvantage except by, or with the approval of, that Government, and he can appeal to the Central Government when he considers that his service rights are infringed by an order of State Government. Within the State administration, crucial positions are occupied by the IAS, who after gaining rich experience of the district and State administration can migrate to the Centre to occupy position of responsibility in the Central secretariat or other governmental agencies. The Indian arrangement creating a common pool of officers, who are in the exclusive employment of neither level of Government and fill the top posts of both Central and State administration comes nearest to an ideal federal administrative system."
Such an all-India administrative arrangement, appropriate for a colonial regime, was hardly likely to delight leaders in the State Government. In effect, what the Central Government was doing was to recruit a group of administrators and send them into States to hold the key administrative posts there. As a result, State ministers were severely restricted in their choice of whom they could appoint to be responsible for the implementation of their policy.

The ARC Study Team on Centre-State Relations and the ARC Study Team on Personnel, however, justified the arrangement and said that the "continuance of the service (IAS) is imperative." The ARC Report asserts, "The all-India services have come to stay. The concepts underlying the all-India services, namely, common recruitment which seeks to ensure uniform standards of experience gained in different parts of the country to the higher administration at the Centre are valid. More all-India services are being contemplated in different fields of administration in the States and at the Centre. We would urge their early formation. It is, of course, obvious that such all-India services would be in a position to function effectively only if Centre-State

relations continue to rest on a sound and cordial basis."  

Sardar Vallab Bhai Patel defended the idea of all-India services for it provided unity to the country and efficiency to the administration. He said, "Many of them (all-India service) with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal and as sincere as myself....... These people are the instrument. Remove them and I see nothing but a picture of chaos all over the country."  

The State, however, do not take very kindly to the formation of All-India-Services because they consider them as the media of interference into their area of activity. "The States were not willing to share control with the Centre in regard to the administration of the subject which under Constitution belonged to them. They also refused to bear the financial responsibility on account of higher salaries being given to the all-India cadres."  

However, K. Hanumanthaiya, reported that Administrative Reforms Commission visited several 

47. ARC Report on Personnel Administration, Supra n.46.  
49. Supra n.6, 102.
States and examined the Chief Ministers and Ministers and "nobody laid evidence before us about the interference by the Central Government". He added, "only one Chief-Minister expressed the view that he did not want all-India services." 50 The State Reorganization Commission, while examining the issue of the linguistic reorganization of the states recommended the creation of new All-India Services. 51 The recommendation was influenced by national unity as well as planning consideration. The Commission argued that to ensure planned development of the country, all-India cadres for certain important technical service should be created so that technical personnel "have uniform standards of efficiency and the feeling of belonging to common and important cadres." 52 Another argument of the Commission was that "officers on whom the brunt of responsibility for administration will inevitably fall may develop a wide and all-India outlook." 53

As the federal politics developed during the 1950s and 1960s, many new trends developed in India's polity. During the 50s, the conflict between States

52. Ibid., p.232.
and the Centre were handled, to a large extent, within the framework of the Congress umbrella. From the end of the 1950s, however, regional parties began to come more to the fore demanding greater independence from the Centre in administrative areas for which States are responsible under the Constitution. One aspect of this was the unhappiness with IAS officers sent in by the Central Government controlled by Congress. For example, when the DMK Government came to power in Madras State in 1967, it promptly told the Centre it did not require any more IAS officers. But they had no control over the situation and IAS men and women continued to arrive there. In Kerala, E.M.S. Namboodripad, former Chief Minister and member of the Communist Party of India (Marxist), openly complained in 1969 that the IAS "are recruited and trained by the Congress party Government at the Centre and posted to States in many of which there are non-Congress Governments," adding, "suddenly one morning I find young boys and one or two girls before me saying that they have been posted to Kerala. What shall I do with them? What do I know of them?" Similar remarks were made by the former Chief Minister of West Bengal. These observations display total lack of the place of

civil service in a democratic set-up and shows in a terse-way the mood of the States on the issue. "It is thus found that the creation of new All-India Services is neither desirable nor practicable. Any attempt to impose them on the recalcitrant States will only result in further embitterment of Centre-State relations." 57

The opposition of State Governments to an extension of 'all-India' principles to the services is somewhat fundamental. "There are today autonomous provinces instead of administered units of territory. In the past, the administration had tended to ignore the people, and the services had worked independently of the sentiments and aspirations of the people. The Constitution visualizes that the people in an area should feel that they are partners in a common enterprise, it is this sentiment which should strengthen their relation with the Centre. The wholehearted association and identification of the people with matters which concern them, more particularly welfare measures, is of vital importance. The Constitution of Services organized on all-India basis has been construed as running counter to this conception. The opposition to a large scale reconstitution of All-India Services cannot be

57. Supra n.6, 104.
lightly dismissed as mere narrow provincialism. Opposition on this score is not, undoubtedly voiced in the open, but emphasis is placed on other tangible consideration - such as the financial burden that the All-India Services will impose, the divided control of the Services with the Centre as the final authority, and the danger of the local candidates being unable to withstand all-India competition, thus making the Services unrepresentative. States while demanding regional decentralization wish to formulate development strategies that take account of the particular feature of agriculture, industry, culture and communication in a given State with its specific political dynamics. They are hopeful that the vertical decentralization of planning, under conditions which ensure political control of State bureaucracy, would enable them to give more attention to cultural, linguistic, ethnic and other specifications as well as differences in the level of development of its different parts. It is not only plan formulation but also its implementation which the States wish to control and "the available instrument for implementation of public policy is bureaucracy".

58. *Supra* n.42, 105.
59. *Supra* n.12, 100.
A new phase in India's political life had started after the elections of 1967. Different political parties come in power in the State and the Centre and the impact of this change has been severely felt on Indian Administrative Service. "Now it is being questioned whether the services, which hitherto were called upon to implement the programmes and policies of the Congress party Governments alone, will implement with the same honesty and zeal the politics of the DMK Government in Madras, the Communist Government in Kerala and for that matter, a Government of another political complexion in any of the remaining State." 60 Cracking up of Congress hegemony, the gradual politicization of the masses, increasing importance of State leaders, formation of coalition Governments and functioning of our political party system has inevitably affected the functioning of bureaucracy as a whole. The concept of neutrality was an early victim. There is a growing lack of appreciation of politicians of the value of neutrality in the civil service and the concept of "committed" bureaucracy was thrown up. Thus one finds that with a change of Government, there is a large scale transfer of senior bureaucrats. It is unfortunate that the more efficient civil servants

who have effectively carried out policies lawfully adopted by the political party in power are the worst sufferers.

Reorganization of the States brought with it a growth of powerful local political forces whose vision does not transcend the boundaries of their States. There has been a definite drift towards localism and regionalism. The opposition to the real or supposed erosion of the autonomy of the States became really vocal. Opposition to the All-India Services also simultaneously started gathering momentum.

Elites from the different States pressurise their State Governments to keep the regional services intact which offer the 'children of the soil' alone avenues of employment. There was also this feeling that the advanced States have more than fair share of representation in these services. But curiously enough, the opposition to the All-India Services became more strident in some of these very States. For example, people of Tamil Nadu backed by the State Government expressed their fears and apprehensions about the threat to the autonomy of the States due to the inroad of the All-India Services in the sphere of subjects within the exclusive jurisdiction of the States. This resulted in the setting up of the Rajamannar Committee by the Tamil Nadu Government.
Committee's Report devoted considerable attention to the Civil Services in India and commented that there appeared no justification for the constitution of All-India Services for duties which relate to subjects within the exclusive field of the State. With the increasing importance of the state leaders, the Central Government have to seek their cooperation for fulfilling certain national goals, like economic planning, agrarian reforms and fight against unemployment. A study in the early 60's of Union-State relations with special reference to Rajasthan cited, for example, the fact that the Central Government had no device to ensure that its general directives in the Five Year Plan would be complied with. It instanced the Third Five Year Plan directive that people who benefited from irrigation projects were required to dig field channels, a directive that remained inoperative in Rajasthan because Rajasthan legislature failed to make the necessary state law. Similar examples were reported in a detailed study in the early 1960s of relation between the Centre and the State of West Bengal. To carry out its responsibilities, the Centre depends on its own administrative personnel in the States. States, on


the other hand, demand greater independence in choice of their administrators who would be responsible for the implementation of their policies. In a budget speech, West Bengal Government claimed to "have attempted to implement an alternative economic programme - alternative to the economic strategy pursued by the Central Government." 63

There is also a problem of a conflict of loyalty and responsibility on the part of the public servant. The state services develop a parochial attitude and tend to look upon the Central services as foreign and even their suggestion as interference. On the other hand, the federal services often betray a lack of appreciation of State's point of view, and tend to regard themselves as superior. IAS officers are frequently perceived as arrogant agents from Delhi. Such perceptions are not entirely misplaced. All India Services, recruited and controlled by the Centre, restrict State rights to recruit and control their own civil servants needed to implement the task allocated under the federal Constitution. In this connection, the CPI(M) Government of West Bengal suggest: "the Constitution be so amended that in case a state does not wish to make use of All India Services, it must be allowed the prerogative to opt

63. Quoted from Nirmal Mukerji, "Loosening of the Steel Frame", The Hindustan Times (New Delhi) 13 August 1987.
out. Moreover, it must be made clear that the personnel to the All India Services, when they serve the States would be under the supervision and disciplinary control of the State Government. If any appeal is to be lodged against any disciplinary action taken by a State Government against an officer, it should be dealt with by the administrative tribunals set for the purpose. The tribunal must be independent of both the State and the Union Government."

Union Government also exercise indirect control over State Services through the powerful instrument of grant-in-aid. The Union Government has the authority to supervise and inspect work programmes carried out by the State Governments under grants given by the Centre. The scope for such indirect control is enormous since much of the development and planning are done under central direction and finance, the execution being left to the States. "Inherent in the very nature of federalism is the difficulty of dual administration, and of the difficult problems facing a federation is coordination of two separate and independent administration. The problem is increasingly becoming more difficult and complicated as the functions of the

64. Memorandum of West Bengal Government : Reply to the Questionnaire, Commission on Centre-State Relations, pp.14-15.
65. Supra n.45, 150.
federal Government go on multiplying."  

Another irritant in this sphere is that in the event of the breakdown of the normal constitutional machinery, the responsibility for the administration of a State is vested in the President (Art 356). The existence in the State of a certain number of officers of All-India Services occupying key posts in administration are certainly helpful to the President. He can count more on the cooperation of officers, who are Union Government employees than on the officers of State Government. The ousted Government naturally feels irked by the pro-Centre policies implemented by certain committed officials during the President's rule. "The February 1983 election in Assam is a glaring example. While everyone who has ears to hear and eyes to see had not an iota of doubt that there would be widespread disturbances in the event of the election being forcibly held, the State administration headed by the senior IAS officers almost wholly coming from other states, who should on that account theoretically be deemed to have been to tender unblessed advice particularly during when the State was under President's rule had no hesitation in advising the Central Government that a free and fair poll would be possible."

David C. Potter opines that the Indian Administrative Services straddles and supports federalism without violating it. His argument is, first: that IAS being a single organization of key generalist posts in central, state and local Governments has a bias towards centralization. But there is also a bias towards decentralization and some assurance of State autonomy as it is composed of sixteen state cadres, and not a single central cadre and in the fact that formally an IAS officer in a State Government acts on the behalf of the State Government and not the Central Government.

Secondly, IAS supports federalism functionally by making a positive contribution to the continued existence of the Indian Union. It is due to the national and not regional orientation of the IAS officers. If we can accept that Indian federalism and national political structure are capable of generating sustained development toward desirable social objectives, then it follows that the IAS can be judged as functional for the development process.67

Whereas William H. Riker maintains that the federal bargain is controlled by one institutional

condition, viz., the party system, David. C. Potter suggested that India's federalism is also controlled by an administrative institution - the IAS. When national policy and region policy are in conflict, the IAS official has a predisposition to act in accord with national policy. Fairly frequent rotation between district and State capital, with occasional assignment to important posts in New Delhi and then back again to States, develop in an IAS officer a clear sense of the political unity in India - a sense of unity not shared by most Indians whose orientation is parochial or regional.

A.D. Gorwala shares the same feeling regarding the services as a force to foster national unity. ".......such allotment (allotment of the All-India Services to the states) would make a valuable contribution to the cause of national unity. Each province would then, in its administration present a replica of many of the elements that contribute to the varied richness of this ancient land. A great dramatist imagines a World Government in which the local administration of each country is conducted by the inhabitants of other countries, thus ensuring impartial administration and at the same time impressing upon the inhabitants of all lands the essential unity of the planet. We in India are fortunate enough to be able to carry out, if we will,
that experiment in large measure, thus providing an effective check to fissiparous tendencies and obtaining an essential uniformity."68 In this connection, Sarkaria Commission's observation is that "any move to disband the All-India Services or to permit a State Government to opt out of the scheme must be regarded as retrograde and harmful to the larger interest of the country."69

THE FINANCE COMMISSION AND THE PLANNING COMMISSION: "In regard to Centre-State relations, two important institutions, the Finance Commission and the Planning Commission have tended to work in opposite directions. The Finance Commission strives to ensure the financial autonomy of the State so that they may fulfil satisfactorily the functions assigned to them by the Constitution. The Planning Commission brings the States into a national plan frame and leaves them hardly any sphere which they may call their own so that country may move, without deviation or distortion, along the path of planned development of the Planning Commissions' conception."70 A great heat has been generated by the issue of financial

allocations between states through the mechanism of Finance and Planning Commissions.

Recognising that the allocation of responsibilities or functions and powers between the Centre and States cannot but create a vertical imbalance as the States would not have adequate source of fund to meet their responsibilities, and also drawing on the experience of the pre-independence days, the Indian Constitution in its financial provisions provided 81 to 93 items in the Union List and 45 to 64 items in the State List. This indicates that the taxes can be levied by the respective Government and Articles 268 to 282 relate to distribution of taxes levied and/or collected by the Union Government, grants-in-aid to the States by the Union Government and functions of the Finance Commission, while Articles 292 and 293 deal with the borrowing power of the Union and State Governments. The Constitution, thus, gives specific recognition to the fact that the power of the Centre to levy taxes or raise loans is much larger in fiscal terms than that of the States and therefore, provides for distribution to the States of the whole or part of many of the taxes that can be levied only by the Central Government and of central loans to the States. Whereas taxes referred to in Articles 268 and 269 wholly accrue to the States, it is articles 270 and 272 which
are important as they refer to two major central taxes which are either compulsorily shared with the States as in the case of income-tax or permissively shared with the States as in the case of excise duties. Article 275 refers to the grants-in-aid to "such States as Parliament may determine in need of assistance and different amount may be fixed for different States". Article 280 provides for the periodic setting up of Finance Commission to advise the President on the share of two central taxes that should be made available to the States and its distribution among them, as also the principles which should govern the grants-in-aid to the States. Article 282 which follows the clause relating to the Finance Commission, provides for grants by the Union (or the States) for any public purpose. It is under this Article that the States receive their plan grants while Article 293 clause (2) authorises the giving of loans by the Central Government to the State Governments which presumably covers the large plan loans which have been made to the State Governments.

The Federal Government in India has elastic tax revenue sources such as income-tax and excise whereas the State Governments are having inelastic tax revenues (with the minor exception of sales tax). The expenditure of the States is mounting for the administration of social services and developmental
activities. The inevitable revenue gap is substantial for the State Government. Thus they receive, from the Central Government, their shares of income tax and excise duties as well as grants-in-aid for non-plan purposes on the recommendation of the Finance Commission and grants and loans on the recommendation of the Planning Commission. We have, therefore, two bodies for the fiscal management of States and the Centre, viz, Finance Commission to look at the non-plan and Planning Commission to look after plan matters. The financial inadequacy on the part of the States make them dependent on the Union Government for plan grants, loans and other ad-hoc grants as per their requirement.

There is a wide spread feeling among the States that the Centre has been increasingly encroaching on the sphere exclusively allotted to them under the Constitution in List 2 of the Seventh Schedule and tending to play a dominant role in the sphere allotted to them for concurrent jurisdiction under list 3 of the same schedule. The States view with concern the tendency towards fiscal centralisation in the country. The grievance of the States has been that there has been a trend towards greater centralization than is conducive to the good federal governance in a country like India. Apart from the political
environment, factors which appear to have generated this feeling mainly, are:

(i) Growing dependence of the State on the Centre for financial resources and accentuation of vertical imbalance;
(ii) Devolution of federal funds through non-statutory channels;
(iii) Encroachment by the Centre into the States' spheres via the use of concurrent powers especially since the adoption of planning and on the States' powers of taxation in various ways;
(iv) Narrowness of the base of taxes coming within the jurisdiction of the States and exclusion of heads like the corporation tax from the sharable pool;
(v) Reluctance on the part of the Centre to levy and collect taxes which were meant for the States under Articles 268 and 269 of the Constitution;
(vi) Tendency on the part of the Centre to avoid raising more revenues from taxes proceed which are sharable (like personal income tax) and turn more to those which do not go to divisible pool (like surcharge on income-tax, corporation tax and administered prices); and
(vii) Concentration of powers of borrowing and control over banking and capital market in the Centre."

K.K. George and I.S. Gulati have also examined the extent of the Centre's involvement in State and Concurrent subjects through the budgetary operations of the central financial institutions. They have brought out that the Centre has entered the State and

Concurrent field in a big way through the fiscal and financial instruments at its command and converted a large number of the State subjects virtually to Concurrent, if not Union subjects. The authors have concluded, "that the Centre has made massive inroads into State subjects through the financial backdoor. As a consequence, the separation between the State subjects and Central subjects can be said to have become less and less clear and therefore blurred. A major State subject like agriculture has virtually been transformed into a Concurrent subject. As for industry, it has become more or less a Union subject. This is all the more true if we take into account financial and other institutions controlled by the Centre. Through these institutions, the Centre's hold in the concerned field has become even stronger."  

The Constitution provided for the device of the Finance Commission for periodically deciding how the finances raised by the Union Government are to be distributed among the States, no such provisions were made for the Planning Commission. V.M.Dandekar opines that "the Constitution did not anticipate that the country would soon adopt the strategy of planned development and did not provide for the appointment

of a Planning Commission with well-defined powers and functions." 73 H.K. Paranjape is of the view that "the possibility that the economic planning will be taken up as an important activity under the new Constitution was not ignored by the Constitution-makers." 74 Dr. G. Thimmaiah holds the view that "the framers of our Constitution did not integrate explicitly economic planning into the federal democratic political framework, not did they provide any specific constitutional powers to the body which would have to implement such planning." 75 M.R. Masani has written, 76 that at one stage of the constitutional discussions, Jawaharlal Nehru had thought of putting the item of "economic and social planning" in the Union List but after thought it was decided to put this item in the Concurrent List. The Constitution makers did not over look the possibility of the relationship of Centre and States being affected by the plans of development. The Constitution makers as well as the leaders of the Government, especially those like Nehru were keen on organizing India's development efforts through

73. Supra n.70, 1865.


76. The Times of India (New Delhi) 17 July 1983.
economic planning and they had both understanding and foresight about what development planning would involve. The Planning Commissions, which were subsequently appointed are not statutory bodies as are the Finance Commissions. The Planning Commission is appointed by the Union Government and do not suffer from any constitutional limitation on their power and are essentially organs of Union Government.

Having been created by an executive order of the Union Government, Planning Commission is fully subordinate to it and, therefore, subject to the wishes of that Government, both in its composition and in its making. The Planning Commission is also a political body because the Chairman of the Commission is the Prime Minister of India. It can also not be described as a body of experts. Thus "the Commission has been established as a multi-member body and not as usual single administrative department. The very composition of the Commission ensures effective liaison with the Government. Though the Commission is a staff agency to advice Government in matters of planning and development, Government itself is represented on the body of the Commission." 77

The basic approach towards Centre-State fiscal

relations in India is governed by the Constitutional provisions and the recommendations of the Finance Commission within the overall framework set by the Planning Commission. The role of Planning Commission became a bone of contention between the Centre and the States. From the position of a purely advisory role, which it was originally assigned in 1950, it is said that it has tended to become almost parallel government. The late Chief Minister, C.N. Annadurai, while presenting the budget to the State Legislature on June 17, 1967 had said that there has been considerable change in the matrix of Centre-State financial relations since the provisions of the Constitution in this regard were settled. There have been a number of new trends and developments which could not have been visualized when the Indian Constitution was framed. The Constitution had already provided for considerable concentration of powers in the hands of Central Government. Though a new institution which was beyond the ken of the architects of the Constitution, the Centre has acquired still larger powers causing concern about the position of the States. This new development relates to economic planning. The powers which the Central Government has assumed in regard to mobilization, allocation and pattern of utilization of resources for the Plan have reduced the States to the status of supplicants for

78. Supra. n. 42.
Development planning in India has given rise to a number of controversies between the Centre and the States. Setting up of Planning Commission has strengthened the powers of the Centre and increased the financial dependence of the States on the Centre. There has been increasing consciousness among the States about their position of helplessness. This has resulted in what some scholars have pointed out as Centre-baiting and aggressive demands of greater State autonomy.\(^7^9\) One of the major complaints of the States has been that of allocation of central Plan assistance. It was pointed out that not only had the size of the plan outlay at the Centre had been increasing more rapidly than that of all the States taken together, but the manner in which States would undertake development efforts had also been attempted to be dictated by central authorities. The Central Government attaches conditions to the centrally sponsored schemes and a State has to accept these conditions if it wants to avail itself of these schemes or else it has to forgo both the scheme and the central assistance accompanying them and thereby face adverse comments from its people. Faced with such a dilemma, no State has ever refused to follow the

policies laid down by the Planning Commission at the cost of losing massive financial assistance from the Centre.\textsuperscript{80} The Centre’s influence on State planning is further exemplified by the fact that the pattern of state Plan outlays under successive Five Year Plans increasing came to be uniform.\textsuperscript{81} Because of the system of schematic matching assistance, the States had been almost compelled to accept not only particular schemes but even details such as pattern of staffing regarding the schemes suggested by Central Ministries. It is not as if the ministries at the Centre have always had adequate and effective information about the situation in individual State so as to be in a superior position to work out what was good and suitable for their development. It is, therefore, rightly resented by the States that, because of financial strength, central authorities have been in a position practically to dictate plans and programmes to them. States, though responsible for some of the most crucial sectors of national life, such as agriculture, education and health, are starved of financial resources. As much as three-fourths of total budgetary resources (taxes, borrowings etc.) come within the central purview,

\textsuperscript{80} K. Santhanam, \textit{Union State Relations in India} (Bombay : Asia Publishing House, 1960).

\textsuperscript{81} Government of India, \textit{Administrative Reforms Commission, Report of the Study Team on the Machinery for Planning} (Delhi : Manager Publications, 1981, pp. 7-11).
while on the expenditure side the share between the Centre and the State is just equal. The non-statutory transfers made on the recommendation of the Planning Commission (by way of Central assistance for state Plans) and discretionary transfers made by Central Ministers are not only condition but are, in a large measure, in the form of loans which are to be repaid. This leads to a high degree of fiscal dependence of the States on the Centre. The allocation of Central resources for Planned development is inevitably influenced a great deal by the political considerations and pressures, the States have tended to bend their effort and stretch their ingenuity for securing the maximum share of resources for themselves rather than for helping to raise them or for bestowing care on good management. Furthermore, the capital-intensive big plan projects require foreign aid in the form of loan capital for the import of machinery and/or technical know how. But the States have no power to borrow from foreign country and to negotiate foreign aid independently. As a result, States have been compelled to accept the policies and priorities laid down by the Planning Commission in order to get necessary foreign assistance through the Central Government.

One of the very important questions which the Planning Commission is seized of, is the question of
inequality among States. This has led to the emergence of keener consciousness of regional backwardness and disparities in economic and social development. "In fact regional backwardness and differentiation is now emerging as a factor for statehood and causing increasing embarrassment for the Central Government." It was expected that the Planning process would be so designed as to bring higher growth in poor States in comparison to the rich States. But the Centre has not used its fiscal powers to bring about a reduction in the regional economic imbalance. This imbalance further threatens economic viability of the poorer States leading to political expression of fissiparous tendencies. It is alleged that under the Plans, as in the case of individuals, so also in the case of regions and States, the rich had grown richer and the poor, poorer. States feel that the Planning has not corrected the imbalance in the development of pre-independence period. "Central projects not being evenly distributed, the ineffectiveness of the industrial lincensing for ensuring the location of industries in less industrialised regions and States, the concentration of financial assistance by Central financial institutions in favour of already developed States

and the inadequate assistance provided by the Centre for development of less developed States,"83 are some of the important factors contributing to regional imbalance.

Advocate of State autonomy have vehemently criticised the close association of the Planning Commission with the Centre and have demanded restructurign of financial relations from time to time. J.K. Thavraj Committee Report (Taxation Enquiry Committee setup by the Government of Kerala), Rajamannar Committee Report (The Committee On Centre-State Relations instituted by Tamil Nadu's DMK and which submitted its report in 1971) and the West Bengal Memorandum to the Centre (given in 1978) all plead and argue for State autonomy. Efforts of the States bore some fruits when it was agreed that a link between the Finance Commission and Planning Commission would be created through the appointment of one member of the Planning Commission also as a member of the Finance Commission. But the centralizing tendency reasserted itself since 1980 and continued since then. There has also been a more pronounced tendency to appoint party political personalities as the effective heads of the Planning

83. H.K. Paranjape "Centre-State Relations in Planning", Indian Journal of Public Administration, Vol. XVI, No.1,
Commission. "The Planning Commission is now seen to be quite openly an organ of the Union Government, subordinate to its will, and with no pretensions to having a federal and non-partisan character."84 V.M. Dandekar also feels that "the successive Finance Commissions have striven to pressure and promote the federal character of the Indian Union and......the successive Planning Commissions have imposed and promoted unitary elements into the system."85

"Federal finance is in many ways the heart of federalism. Federal financial relations faithfully reflect the equation of powers and influence between the Centre and the State and among the States inter se. Confidence in the machinery and process of allocation and distribution of resources is fundamental to the integrity of a federal system. Our Constitution adopted the device of Finance Commission which by all accounts can provide the most logical and fair institutional method. Successive Finance Commissions have made valuable contributions to our federal system ........"86 The Finance Commission, which reviews the budgetary needs of the States at intervals not exceeding five years, specifically deals with :

84. Supra n.74, 1953-58.
85. Supra n.70.
a) the distribution between the Union and the States of the net proceeds of taxes which are to be or may be divided between them and the allocation between the States of the respective shares of such proceeds; and

b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidate Fund. It is open to President to refer any other matter to the Commission 'in the interest of sound finance'. In other words, it gives discretion to the President to remit to the Commission any financial issue impinging on Union-State relations.

This mechanism of federal transfers was designed also to correct the "horizontal imbalance", that is, the sharp disparities in the scale and level of public services among the States and resulting from differences in their economic structure and level of development. This is a well established goal of all federations and needs to be ensured in the interest of stability and harmonious relations. The first Finance Commission set up under the Constitution, in its approach to the problem of Centre-State financial relationship, realized that the increasing need of State Governments and the ability of the Central Government to assist the States would need to be kept in mind in making recommendations. The above guidelines were generally followed by the successive

Finance Commissions while making recommendations relating to federal fiscal transfers. The shares of the States in the total divisible taxes and duties continuously increased as a result of recommendations made by the successive Finance Commissions. One reason for widespread resentment against the award of Finance Commissions is that they follow virtually the same pattern as was evolved during the British days for the transfer of revenue from the Centre to Provinces. Successive Finance Commissions have modified the pattern here and there.\textsuperscript{88} The transfers recommended by the Finance Commission are, in fact, designed primarily to help the States to maintain financial equilibrium, that is, to balance their budgets. The Finance Commission itself, instead of being the chief arbiter of the transfer problem has became, by a process which it could protest against but could not stop, an arithmetical agency for devolution and forum for ventilation of state grievances.\textsuperscript{89}

The recommendations of the Finance Commissions were originally intended to cover all financial transfers from the Centre to the States under Article 269, 272, 275 and 278. Finance Commissions

\textsuperscript{88} G. Thimmaiah, \textit{Memorandum Submitted to Seventh Finance Commission} (unpublished) September 1977, p.3.

recommended the financial assistance to cover both revenue and capital requirements of the States up to the end of the Second Five Year Plan. But afterwords, the assumption by the Planning Commission of the responsibility of allocating the national resources among different sectors and regions of the economy and also the exigencies of the Planning have necessitated the limiting of the scope of the recommendations of the Finance Commission to non-plan requirements of the States in their revenue budgets. "An important reason for unhappiness with the existing system of federal transfers seems to be that contrary to what was probably intended the bulk of the federal transfers is taking place through channels other than Finance Commissions award or "statutory transfers" as they have come to be known." 90

The position and scope of the Indian Finance Commission have changed in the context of the emergence of the Planning Commission. The fact that the Planning Commission was established even before the first Finance Commission was constituted and the First Five Year plan was promulgated with its own scheme of plan grants to the States even before the first award of a Finance Commission, surely had some

impact upon the relationship between the two Commissions as it came to evolve. It is interesting to note that the Report of the First Finance Commission (signed on December 31, 1952) does not make any mention of the Planning Commission or the First Five Year Plan, even though the Planning Commission was established in March 1950 and the draft outline of the First Plan was published in 1951. The Plan document, however, mentions that "a reappraisal of State finances will be necessary in the near future, particularly in the light of the recommendation of Finance Commission." It was further stated, "the whole scheme of Central assistance, as now worked out, may also to be readjusted in the light of the recommendations of the Finance Commission." 91

The President of India asked the Second Finance Commission to take into account the requirement of States under the Second Plan while recommending the transfer of resources from the Centre to the States. The second Finance Commission felt its anomalous position in this context and observed that, "we had some difficulty in dovetailing our work with that of the Planning Commission owing to two factors. First, the Second Five Year Plan covers only the first four years of quinquennium to which our recommendations

will apply. Secondly, the Plan does not distinguish between revenue expenditure and capital expenditure, while our main function under the Constitution is to make recommendations for the devolution of revenue resources. We, therefore, obtained from the Planning Commission a state-wise break up of plan provisions between revenue and capital."

Even after obtaining such data, the Commission could not limit their recommendations to only revenue components of the plan expenditure as those data were not free from superficiality. Therefore, the Commission accepted the fact that so far as the Second Five Year Plan is concerned, "we have sought to meet it by taking into account in our scheme the requirements of the States for the plan as a whole including scheme involving matching grants, so that States will have resources to meet their share of expenditure. But we suggest that for the future, no scheme outside the Plan should be formulated on a matching basis." Further, they admitted that "anomalies inevitably arise where the functions of the two Commissions, overlap. The former is a statutory body with limited functions, while the latter has to deal comprehensively with the finances

93. Ibid., p.68.
of the Union and States in the widest sense of the term. So long as both these Commissions have to function, there appears to be a real need for effectively coordinating their work."^94 Accordingly, they recommended that "it will be an advantage if, in future, the period covered by the recommendations of a finance commission coincides with that of a five year plan. Further it is desirable to eliminate the necessity of making two separate assessments of the needs of the States."^95

The Third Finance Commission observed that "the role of the Finance Commission comes to be, at best, that of an agency to review the forecasts of revenue and expenditure submitted by the States and the acceptance of the revenue element of the plan as indicated by the Planning Commission for determining the quantum of devolution and grants-in-aid to be made, and at worst, its function is merely to undertake an arithmetical exercise of devolution, based on amount of assistance for each State already settled by the Planning Commission, to be made under different heads on the basis of certain principles to be prescribed."^96 Therefore, the Commission

^95. Ibid.
recommended that in future, the Centre should either "enlarge the functions of the Finance Commission to embrace total financial assistance to be afforded to the States, whether by way of loans or devolution of resources, to enable them both to balance their normal budgets and fulfill their prescribed targets of the plan" or "transfer the Planning Commission into Finance Commission." The Third Finance Commission, thus, did not consider it proper to retain both the institutions by bifurcating their responsibilities and coordinating their functions. The Fourth Finance Commission recognized the significance of the bifurcation which was by then introduced but it did not satisfy Dr. P.V. Rajamannar, the Chairman of the Commission. And, therefore, he observed that "it is the setting up of the Planning Commission that has in practice restricted the scope and functions of the Finance Commission." Though the Fourth Finance Commission accepted the defacto bifurcation, Chairman of the Commission insisted giving it a dejure status through necessary constitutional amendment.

Since the Fourth Finance Commission, the task of the Finance Commission has been viewed as one of assessing the non-plan revenue gap of the States and

ensuring that the States can begin their plan exercise without any short-fall in their current account. This approach - viz - "gap filling" - is believed to be responsible for generating an environment of fiscal indiscipline in India all round. This practice of limiting the Commissions recommendations to cover only the non-plan revenue gap of the States continued till the Eighth Finance Commission. This restriction has been relaxed in terms of reference of Ninth Finance Commission. By enlarging the ambit of the Ninth Finance Commission, an attempt has been made to alter the pattern of devolution of federal funds that had emerged in the last two decades. However, some academicians have questioned the constitutionality of the expansion of the Finance Commission's jurisdiction implied by the terms of reference of Ninth Finance Commission and they saw in it an attempt on the encroachment on the autonomy of the State Government. Obviously, they had not taken note of the fiscal scene which has radically changed since the Constitution was framed. Now "instead of States being short of funds, it is the Centre which runs into deficit and since the beginning of the present decade even the revenue account of the Centre, after devolution of taxes and grants to the States has been consistently in the red and deficit are increasing alarmingly in recent years. The State budgets, on the other hand, have been on the whole balance and have
shown some surplus on the revenue account after devolution of central revenues except for one or two years."99 similar view has been expressed by Sitaram Gurumurthi.100

In the federal framework which the Indian Constitution contemplates, the arrangement for governing the financial relations constitutes almost the keystone and in this again the institution of Finance Commission has a crucial role. But its working has been criticized on the ground that lack of any agreed formula and considerable confusion in the criteria adopted in determining central assistance has resulted in an unhealthy competition among the States to indulge in bargaining and manipulation to obtain larger assistance from the Centre."101 On the bargaining it is seen that often developed States came out better than financially impoverished states, thus creating further gap and regional imbalance among the States. Whereas Bhabatosh Datta102 opines that


sometimes the awards increased instead of reducing inter-state disparities in the benefits of statutory transfers. V.M. Dandekar\textsuperscript{103} writes that "within the overall financial resources of country and feasible transfers from the Union to the States and from the more developed to less developed states, the successive Finance Commissions have done an admirable job." Justice P.B. Mukherjee is outright critical in condemning Finance Commission. To quote him, "the outstanding fact remains that the successive Finance Commissions in India have been a great disappointment to many States and they hardly solve any of the major problems in some of the States."\textsuperscript{104}

Inspite of short comings no suggestion has so far been made for the deletion of the provisions of the Finance Commission from the Constitution of India. On the contrary, the Srinagar conclave of opposition parties resolved in October 1983 that "all financial transfers should belong to the jurisdiction of the Finance Commission."\textsuperscript{105} The non-Congress-I ruled States demanded that all financial transfers should

\textsuperscript{103} Supra n.70, p.1867.

\textsuperscript{104} Quoted by J.N. Sharma in The Union and The States : A Study in Fiscal Federalism (New Delhi : Sterling Publications, 1974), p.34.

\textsuperscript{105} Srinagar Statement of Opposition Parties on Centre-State Relations adopted on October 5 July 1983, on Centre-State Relations, para 24, p.9.
be handled by one Commission, i.e., Finance Commission. The Bhartiya Janta Party demands in its memorandum to the Sarkaria Commission that "the character of the Finance Commission should be suitably changed. It should not remain as it is now, a Centre dominated institution. Article 280 should be amended so that the composition of the Commission reflects the federal character." Almost all the State Governments are critical of the functioning and existence of two separate bodies, the Finance Commission and the Planning Commission, both engaged in the allocation of resources from the Union to the States.

Role of the Finance Commission changed with the appointment of the Planning Commission. "But after the Planning Commission came into existence, the Planning Commission, slowly and steadily began to make its own recommendations and began to give its own grants. So much so that there is practically a dyarchy now."  

To see the effect of the Planning Commission on the working of the Finance Commission, we should note

106 Supra n.105.
the difference between the Finance Commissions' recommendations of devolution to States through tax-sharing and grants and the Planning Commissions' recommendations regarding plan assistance to States through grants and loans. The tax-sharing is regarded as a matter of right and can leave the States with surplus which they are free to spend. The grants under Article 275 are limited to non-plan deficit. They can be conditional but generally are not. In a sense, the deficit States receive these grants also as a matter of constitutional rights. In contrast, the whole plan assistance is dependent on the approval by the Planning Commission of the states' Plan as a whole. The assistance would be reduced in proportion to the shortage in the agreed Plan outlay. On some items the assistance is tied so that a shortfall in expenditure on these items would invite a cut in earmarked assistance. Moreover, since the non-plan surplus is regarded as an item of Plan resources, the Finance Commission tax-sharing also comes indirectly within the purview of the Planning Commission. The Finance Commission strives to leave as many States as possible with a surplus in their non-plan revenue accounts hoping that the States may then be free to use this surplus to finance planned development of their own conception. This does not happen. A State has no freedom to use its non-plan revenue surplus any more than it has to use the Plan assistance from the Union.
The two are put together along with any additional financial resources it may be expected to raise and the expenditure of it all is subject to an overall Plan approved by the Planning Commission. "A State may have a non-plan surplus. It may be willing to raise additional resources. It will accept plan assistance of which a large part is in the form of loans which must be repaid. But it has no freedom, no autonomy in deciding the pattern of its development. Such are the compulsions of a national play." ¹⁰⁹

"By way of an overview of financial cum planning issues, it could be said that basic issue here is how to bring about a balanced partnership between the Union and the States in national building activities within the confines of centrally planned development, reconciling national priorities with local needs on 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 economize on their own." ¹¹⁰

The foregoing discussion demonstrates that while the institutions were originally intended by

¹⁰⁹. Supra n.70, p.1869
¹¹⁰. Supra n.12, p.113.
the framers of the Constitution to function in one way, their operation has no relation to the original intentions. Human institutions embody values. And political institutions are devised, made and reformed to realise certain political values. When they are distorted and used for other purposes, they begin to lose their meaning and are rendered burdensome. People start losing faith in them. India adopted federalism to actualize and uphold the values of national unity, cultural diversity, democracy and rapid socio-economic transformation through collective endeavour. At the time of framing of the Indian Constitution, some of these values were hovering in the minds of the members of the Constituent Assembly of India. However, except for a few years in the beginning, the values and goals underlying the formation Indian federalism were not being faithfully realized. There is a great pressure on the goals of national unity, regional autonomy and socio-economic transformation of society by the constituent units themselves.

The office of Governor and Bureaucracy are two important institutional areas of tension in Centre-State relations. Politicisation of these institutions, a combination of unmerited rewards and punishments, transfer and promotions has turned even upright officers into servile minions of their
political masters. The proper working of the office of the Governor is of crucial importance not only for the functioning of the federation but also for the success of the democratic system of the Government in the country. But unfortunately this office has deteriorated into a sinecure for ruling party rejects, mediocres and superannuated bureaucrats meriting reward for services rendered. Since the Governor holds office during the pleasure of the President, his position has weakened and he is increasingly subject to the whims and fancies of the Central Government. The phenomenon of wholesale removal of Governors with a change of Government at the Centre has brought the institution to ridicule. The principles of natural justice for the removal of Governor - so that he can act both as the eyes and ears of the President and the conscience keeper of the Chief Minister - are not observed. Is it any wonder, then, that most Governors functioning with the Sword of Damocles hanging over their heads have chosen the easier way out to ensure that they complete their term of office by complying with the wishes of the ruling party at the Centre. The gradual devaluation of this institution has posed many questions: should the office of Governor be abolished since it creates disharmony in the democratic functioning of Centre-State relations? Is the Governor expected to be merely a figurehead sending stereo-typed reports to the
Bureaucracy is another major factor to reckon with under any system of Government. But the politicians who have assumed the role of being the sole guardians of public interest have trampled over everything and the real character of what is popularly known as the politician-bureaucracy combine became glaringly clear. A large part of the bureaucratic machine slowly succumbed to the vicious exercise of power by the politicians and a considerable section of bureaucrats also exhibited love for power. The concept of "committed bureaucracy" was inevitable. Besides, the neutrality of services, the formation of new all-India services is another point at issue. Equally relevant in this context is to inquire if the State Governments have an adequate control over the superior services in relation to their vast developmental responsibilities. Now serious doubts are being raised by many whether Indian bureaucracy is in a position at all to change from the bloated, inefficient and corrupt machine which has revelled in an omnipotent exercise of authority and convert itself into an efficient instrument to serve a more decentralized polity.

Along with the near collapse of over-all
administrative system, the country is poised on the precipice of a financial collapse. The process of over-centralization which is reflected in the Planning Commission arrogating to itself more and more powers is largely responsible for strained fiscal relations between Centre and the States. The Commission has not always been fair in promoting equitable development of the various parts of India. Official figures reveal, for instance, that the per capita plan expenditure in India's most populous State, Bihar, has been consistently lower than the national average from the First Five Year Plan to the current annual plan. Such iniquitous planning has contributed in pushing certain States into backwardness. The Planning Commission has also to bear the onus for discriminating against States whose natural and human resources could have been developed with far greater beneficial effect for the States and India as a whole. The Commission does not even have statutory sanction to do so.

Objections have been raised with respect to the status of the Planning Commission, its over-bearing attitude towards the States, Centre's interference in States' jurisdiction through the centrally sponsored schemes, Centres' control over Plan funds and too detailed scrutiny of States' Plans by Planning Commission. As the Commission is not recognized in the
Constitution, it is not able to retain any independent status.

The Finance Commission, on the other hand, is appointed as a constitutional devise to balance the resources of the Centre and the States. But in the context of the emergence of the Planning Commission, its position and scope has changed. The Planning Commission has become the most important body in the devolution of fund. But Planning Commission itself not being a genuinely federal body is being seen as a handicap in the smooth functioning of Centre-State relations.

The cumulative impact of the wholesale devaluation and misuse of the institutional framework of the Indian polity has resulted in the creation of large pockets of vaccum in some crucial areas of civil administration. But nature abhors vacuum and the business of life cannot be transacted in a void. Inevitably, therefore, other frame of non-governmental, informal and adhoc structures have risen to fill the voids created by the collapse of governmental institutions. This has led to the emergence of private armies, bands of goons and extremist outfits.