CHAPTER 1
INTRODUCTION

According to A.H. Birch "A Federal System of government is one in which there is a division of power between one and several regional authorities, each of which, in its own sphere, in coordinate with the others, and each of which acts directly on the people through its own administrative agencies."\(^1\) This view makes it clear that in modern times the federal and regional governments are not required to be strictly independent of one another as according to older concept of classical federations, they were expected to be.

Bernard Schwartz also points to the inappropriateness of the classical concept of federalism in the modern times, because it has not been able to withstand successfully the stresses of twentieth century political evolution.

The emerging tendencies in federal systems were realized by Livingston, when he says that the essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces - economic, social, political, culture - that have made the outward forms of federalism necessary. According to him, federalism is a solution of or an attempt to solve, a certain kind of problem of political organization.\(^2\)
M.J.C. Vile made an attempt to substitute the idea of interdependence in the place of independence and according to him federalism is "a system of government in which neither level of government is wholly dependent on the other nor wholly independent of the other."3

W.H. Riker has pointed out that "A constitution is federal if two levels of Government rule the same land and people, each level has at least one area of action in which it is autonomous and there is some guarantee, even though merely a statement in the constitution, of the autonomy of each government in its own sphere."4

The modern age is the age of Co-operative federalism.5 The essential features of cooperative federalism are not coordination and independence between the federal and unit governments, but co-operation and interdependence among them. A.H. Birch rightly accepts6 the term co-operative federalism as indicative of the changing balance of force of forces whereby federation and unit governments are ceasing to be rigidly independent of one another.
Prof. Reagon also asserts that "Federalism needs to be re-examined, not from the viewpoint of abstract conceptualization, but by forms of continuing actual interaction, between the national state and local levels of government." He has summed up the difference between the old style and new style of federalism as follows:

"Old style federalism described a non-relationship between the national and state governments. New style federalism refers to a multifaceted positive relationship of shared action. The meaning of federalism today lies in a process of joint action, not in a matter of legal status. It lies not in what governments are, but in what they do. It is matter of action rather than structure. It is dynamic and changing not static and constant." A federal society may have its diversities as well expressed by a unitary constitution which is worked in a federal manner as by a federal constitution which is worked in unitary manner.

A perusal of the functioning of federalism of U.S.A., Australia, Canada, Swiss or elsewhere clearly reveal that the formal Criteria for testing the presence of federalism set forth by Freeman, Garran, Dicey, and where, has been rejected to a great extent. Now, federalism is embracing a new workable
meaning almost everywhere, and Indian federalism is no exception to this general tendency and developing phenomenon of federalism.

SALIENT FEATURE OF INDIAN POLITY

The constitution of India, having been drawn in mid-twentieth century, present a modified form of federation to the special requirements of the Indian society. But all the essential features of a federal polity are present.

DISTRIBUTION OF POWERS

There is a distribution of legislative, executive and financial powers between the union of the states. This distribution of various powers between the two sets of governments does not depend on any all to be made by the centre, but by the constitution itself. It necessarily distinguishes the pattern of distribution of powers to be found in a unitary system. Territorially, the legislative power is divided between the Union Parliament and legislatures of the states. The former may make laws for the whole or any part of the territory of India, and the later may make laws for the whole or any part of the states.
The distribution of legislative powers, from the points of the view of subject matter, is made following the Canadian pattern of division of powers between the dominion and the provinces.

1. In the first place, the constitution enumerates the subjects with respect to which the legislatures of the states have exclusive power to make laws. This has been designed in the constitution as the state list.\(^\text{10}\)

2. Secondly, it enumerates the matters with respect to which the union parliament has exclusive power to make laws. This is known as the Union list.\(^\text{11}\)

3. Thirdly, Article 248 of the constitution vests residuary powers in the union parliament.

4. Fourthly, it does not expressly provide for the grant of ancillary powers. In addition to above the Indian constitution provides for a concurrent field of legislation.

The lists of subject-matters have been drawn from the view of the national or local importance of the matter. The Union Parliament has exclusive power enact laws with respect to 96 items along with a residuary item which are of general or national importance including derence, preventive detention, foreign affairs, communications, property of the Union, financial
and economic powers, Union services, election of parliamentary affairs, judicial matters etc.

The Legislatures of the states, on the other hand, have exclusive power to enact laws with respect of 66 items of state list which are of local or regional importance, for example law and order, health, local govt. relief of disabled persons, education, land and agriculture, trade commerce and industries, state property, election of legislative affairs, state public services etc.

The executive powers are divided between the Union and the states on the basis of the legislative powers i.e. the executive power of the union extends to all matters with respect to which parliament has power to make laws and the executive power of the state extend to the matters with respect to which the legislatures of the state have power to make laws. In other words; the distribution of executive powers between the Union and the state is coterminus with the distribution of legislative powers.

The provisions relating to distribution of legislative powers clearly indicate that the constitution has adopted the
principle of rigid separation in the matters of distribution of financial resources between the union and the states. The two fiscal spheres are distinct from each other. Either government cannot encroach on any fiscal matter which forms the subject matter of the other government.

Thus, under the union list, the following matters fall exclusively within the competence of the union: taxes on income other than agricultural income, corporation tax, taxes on the capital value of the assets exclusive of agricultural land, of individual and companies, Eastate duty in respect of property other than agricultural land, duties in respect of succession property other than agricultural and, Terminal taxes on goods or passengers carried by railway, sea or air, taxes on railway fares and freights, taxes other than stamp duties on transaction in stock exchanges and future markets, rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, taxes on sale or purchase of news papers an on advertisement, published therein, taxes on the sale or purchases of goods other than news papers where such sale or purchases takes place in the course of interstate trade or commerce and any other tax not enumerated in List II or III.
Similarly, the states enjoy exclusive power in respect of following items:

Land revenue, taxes on agricultural income, estate duty and succession duty in respect of agricultural land, taxes on land and buildings, taxes on mineral rights subject to such limitations as may be imposed by the Union Parliament, taxes on entry of goods into a local area for consumption, use or sale; taxes on the consumption or sale of electricity; taxes on sale or purchases of goods other than newspapers; taxes on advertisement other than advertisements published in the newspapers; taxes on goods and passengers carried by road or in land water ways; taxes on vehicles suitable for use on roads including tram, cars, taxes on animals and boats, tolls taxes on luxuries includign taxes on entertainemtms; betting and gambling; excise duty on alcoholic liquors for human consumption, Indian hemp and other narcotics manufacturred or produced in the state (but not including medicinal and toilet preparations containing alcohol or any such substance) and contervailing duties at the same or lower rates on similar goods manufactured or produced else where in India, returns of stamp duty in respect of documents other than those specified in Union list and fees other than court fees in respect of any matter included in the State List.
SUPREMACY OF THE CONSTITUTION

Indian federation derives its existence from the constitution. The constitution is supreme. All the organs of then at National and State Governments derive their powers and authority from the constitution and have to function under the framework of the constitution. All the necessary consequences of the supremacy of the constitution are also found in it.

In the first place, it has a written constitution which contains most elaborate and comprehensive provisions regulating the governmental activities of both the Union and the States. It provides not only for the constitution of the national government but also of the states. The constitution of India, therefore, is a single document providing for the constitution of both the Union and the States and thereby assuring maximum of uniformity.

The constitution of the United State of America, it is to be noted provides only for the framework of the national government. As far as the States are concerned it is only provided that the republican from of government is guaranteed. Thus subject to this limitation, states are free to devise their own constitution. In this way India followed the Canadian
pattern of providing both the constitutions of national and state
government into a single written document.

(AMENDMENTS)

Secondly, the constitution is rigid in the sense that it
requires special procedure for amendments of such provisions
which are of federal importance. Since, it consists of the
constitutions of both the Union and the state, it deals with
enumeration of minute provisions instead of providing basic
framework, it was obvious that all the provisions could not be
declared of equal importance from the angle of their
amendability. The constitution presents a variety of amending
process. some provisions may be amended of an act of either
legislature by passing an ordinary law. It may be termed as
informal method of amendment. It need not follow the procedure
of Article 368.

Formally, the constitutional amendments may be divided
into two categories—the amendent of provisions other than
provisions of fedeeral importance and amendment of those
provisions which bear federal significane. In the case of
former, the parliament may unilaterally amend the constitutional
provisions. Bills to the above purpose may originate in either
House of the parliament and have to be passed by majority
of the total membership of each house as well as by a majority of not less than two thirds of the members of each House present and voting.

AMENDING ENTRENCHED PROVISIONS:

The constitution maintains rigidity in amendment of provisions which relate to federal character and have been termed as the entrenched provisions such provisions include (i) the manner of election of the president, (ii) extent of the executive power of the Union and the State, (iii) the supreme Court and the High Courts; (iv) the scheme of distribution of legislative powers between the Union and the states (v) representation of states in parliament and Article 368 itself.

In relation to the amendment of these provisions, in addition to a majority of total membership of each House and majority of not less than two thirds of the members of each House presented voting, it is also necessary that before the Bill is presented to the president for his assent, it has to be ratified by the legislatures of not less than one half of the states by resolutions. It ensures that provisions of federal character cannot be amended unilaterally by either legislature.
The third consequence of the supremacy of constitution i.e. every legislature is subordinate law making body, is also present under the Indian constitution. Every legislature be it Union Parliament or State Legislatures, is creature of the constitution of India and its powers, rights, privileges and obligations have to be found in the relevant Articles of the constitution. It necessarily involves the concept of limited government. The legislative supremacy is the supremacy within limited area which specifically is allot to a legislature.

To make it more clear, the legislatures have undoubtedly plenary powers, but those powers are controlled by the basic concepts of the written constitution itself and can be exercised within the legislative field allotted to their jurisdiction by the three lists under the seventh schedule. The legislatures cannot travel beyond the lists. If they step beyond the legislative field assigned to them or acting within the respective fields they trespass on any specific provisions of the constitution like fundamental rights of the citizens in a manner not justified by the relevant articles, such actions are liable to be struck down by courts in India.

**DUAL GOVERNMENT**

India possesses a dual government both the union and the state Governments are substantially independent of each other.
Both the government have full sovereignty over a field allotted to them. The Constitution itself says by Article 1 that India is a Union of States. It clearly indicate that the Units of the Union have also certain powers as has the union itself. In words of Dr. Ambedkar 'the states in our constitution are in no way dependent upon the centre for their legislative authority.'

**NATURE OF INDIAN POLITY**

Indian constitution has at all the main characteristics of a federal constitution the constitution provides for a system of double sovereigns with union government at the centre and the state governments at the state level. There is a division of powers between the union government and the state government. The constitution is written and is supreme. The provisions of the constitution which are concerned with federal principles cannot be changed without the consent of the majority of the states. The constitution also establishes a supreme court to decide disputes between the union and the states and the states inter se, and interpret finally the provisions of the constitution.
VIEWS OF THE CONSTITUENT ASSEMBLY ON THE NATURE OF INDIAN POLITY:

The framers of the Indian constitution were fully aware of India's unique and peculiar problems that had not confronted other federations in history. Hence, they pursued the policy of pick and choose to see what would suit them best and what would suit the genius of the nation best.

There were two options open before the constituent assembly—first, to adapt a unitary system of British type and second to choose a federal polity in which there is a division of powers between the centre and the states. For providing good administration of such a big and diversified country and for safeguarding the country against fissiparous tendencies, the assembly was almost unanimous in favour of the federal structure, instead of unitary system only a few members like Brijeshwas Prasad P.S. Deshmukh, and Frank Anthony were opposed to the idea of federalism.

The proceedings of the constituent Assembly were marked by absence of any forceful defence of provincial autonomy urging the rafting of the federal provisions.
However, some of the members in the constituent were staunch supporters of state autonomy and their speeches in the Assembly were like complaints against providing the excessive powers to the centre. Sri P.T. Chako was of the opinion that what the Assembly framed was "in form a federation, in substance a unitary constitution and complained that all power is given to the parliament at the centre and practically, no power is given to the legislature in state. Sri Laknath Misra said that in the constitution there was a complete distrust of the pro. The complained that the states were not granted autonomy to the extent they deserved.

The Union powers committee unanimously supported the idea of a federation with a strong centre. Overriding powers to the centre were favoured by K.M. Ponikhar also to safeguard the structure of administrative unity of India.

Dr. Ambedkar, Chairman of the drafting committee, while clarifying the position of the centre and the state in the Indian federal polity, made the point clearly observing that the constitution establishes a dual polity with the union at the centre and the states at the periphery, each endowed with sovereign powers to be exercised in the fields assigned to them
respectively by the constitution. He further asserted that "the states are not administrative units or agents of the union government." This assertion of Dr. Ambekar was supported by other prominent members of the drafting committee. Dr. K. Santhanam argued that we have got a constitution which is federal and is protected by an independent judiciary, T.T. Krishnamahari maintained that 'the concept of this constitution is undoubtedly federal.' Dr. Ambekar clarified how Indian constitution is federal:

"The basic principle of federalism is that the legislative and executive authority is partitioned between the centre and the states not by any law to be made by the centre but by the constitution itself. This is what the constitution does. The states in our constitution are in no way dependent upon the centre from their legislative authority. The centre are the states coequal in this matter."

Thus the assembly in fact, accepted the establishment of federal polity.

The federal structure that emerged out of the deliberations of the assembly not only provided for a strong centre but also for a stronger executive at the centre itself.
The value that determined the constitutional framework of the Indian federal system had historical, political and circumstantial contexts and were almost invariably conducive to a centralized federation. The Assembly, in fact, produced a new kind of federalism to meet India's peculiar needs. In the words of Mr. Granville Austin, "the Assembly was perhaps the first constituent body to embrace from the start what A.H. Birch & others have called "Co-operative federalism".45

VIEWS OF CONSTITUTIONAL EXPERTS ON THE NATURE OF INDIAN POLITY:

The question whether the Indian constitution is truly a federal or quasi federal or unitary constitution is ready a debatable issue. According to Prof. Wheare "the constitution is quasi-federal" Munshi, a distinguished jurist calls our constitution "a quali-deral union in rested with serveral important features of a unitary Government". This view is not shared by many foreign constitutional jurists. Sir Ivor Jennings holds the view that "India has federation with a strong centralising tendency" Mr. K.P. Mukharji argues that the Indian constitution is "a definitely unfederal or unitary constitution" Mr. Gajendragadkar, former chief justice of India, observes that though it partakes of some of the characteristics of federal
structure it can not be said to be federal in the true sense of the term. There are many others who dispute the federal character of the Indian constitution. Among the latest to enter the ranks of those who deny the federal character to Indian constitution is prof P.K. Tripathi for mely member, law commission of India who finds federalism in India a myth and not reality.

The other group of constitutional experts adopt the liberal and dynamic concept of federalism and accept the Indian constitutional as federal. The most prominent among the foreign constitution experts who defend Indian federal system are - Applely and Birch. Alexandrowing critically examines the charges levelled against the federal character of Indian constitution and very convincingly concludes that "India is undoubtedly a federation in which the attributes of sovereignty are shared between the centre and states." H.H. Birch says that "the Indian constitution of 1949 is a federal one." Applely goes a step further to described the Indian constitution as "extremely federal" schoenfied also joins the group of defenders of the federal character of Indian constitution and regards India as a genuine federation.
The Indian federalism is "Co-operative federalism" in a research study. This writer gives a very brilliant account of co-operative trends working in Indian federal system and concludes that Indian federalism is co-operative federalism. Further Prof. Alexandrowicz in his two famous research articles "Is India a federation" and "quasi federalism India," concludes as under:

1. Gives the brief account of special circumstances and peculiar forces at work which necessitated the adoption of federal polity in India.

2. Pleads the case of Indian federation as different from those who give more emphasis on 'contractual' basises of the formation of a federation.

3. Highlights the ingenuiness of the expression "quasifederation" and

4. Makes the strong case of India for federation.

In his own words "India is supposed to have a quasifederal constitution mainly because of articles 249, 352 to 360 and 371" and critically xmines these articles and answers convincingly the questions raised by strong denouncer of Indian federalism like Prof. where.
The grounds on which the constitutional experts deny the federal character of Indian constitution.

The constitutional experts argue to deny the federal of Indian constitution on the following grounds:

1. Due to Article 3 of the Indian constitution because of which the very existence of states depends on the parliament.

2. On account of the emergency provisions under articles 352, 356 and 360.

3. On the basis of Articles 256, 257 read with article 365.

4. On the basis of Articles 249, 250, 251, 252 and 253.

5. The serious charges against Indian federation is levelled that the body of the Indian constitution no where uses the expression 'federation'.

The federal character of the Indian constitution has also been criticised on these points:

a) Single citizenship
b) All India services.
c) A unified judiciary
d) Uniform election commission and
e) Finance commission and planning commission.

Professor whereas says "what makes one doubt that constitution of India is strictly and fully federal, are the powers of intervention in the affairs of the states given by the constitution to the central government and parliament". In view of Prof. K. Santhanam in incorporating Article 3 in its final form in the constitution. "the fundamental principle that a federation depends upon the territorial integrity of states seems to have been forsaken".

Prof. K.R. Bowdbwall says that "it can be safely asserted that it could not have been the intention of the framers to make the provision of article 3, an instrument for the annihilation of state autonomy. It was, in the other hand, the only practical way of dealing with a complex and controversial but unavoidable problem. This article 3 is defended on the ground of national expediency. The exercise of article 3 in last 40 years shows that it has never been used enthusiastically by the parliament after passing of the States reorganisation Act 1956. It has been exercised only under regional compulsion. The way in which various states have been formed on linguistic considerations clearly proves that the stats have been more strong in this matter."
Sir S.R. Sharma defends Articles 1, 2, and 3 by observing that "but whatever meaning the language of the constitution may be used to yield an actual working of the government, so far as demonstrated that the power to charge the area of the states have been used for furthering the federal principal rather than for any agrandizement of the status of the union government."

According to justice P.B. Mukerji it is wrong to say that articles 2 and 3 of the constitution make the states impermanent and it does not mean that the existing states can be altogether abolished under the constitution. Neither the states have right to secede from union the union has power to expel a state out of the union. Thus, in view of ample parliamentary powers under article 3, it may be concluded that unlike unified states, India is a indestructible union of destructible.

The Indian federation is also attacked due to the emergency provisions under articles 352, 356, and 360. These provisions provide wide powers for the centre to enroach on the normal legislative and executive powers of the states, but if can not be permanent feature. These provisions though unfederal and undemocratic were adopted as necessary evil with the caution that these would be traded as deal letters. These provisions
were inserted in the constitution as safety measures. According to Prof. Alexandrow, "the members of the constituent assembly have shown considerable far sight in including these provisions into the constitution as they may enable the country to face any danger by centralized action without effecting its ultimate federal structure.

The nature of Indian federation has also been criticized on the basis of Articles 256, 257, and with Article 365. Due to these provisions, some writers maintain that India is quasi-federal. Morris-Jones has rightly called articles 256, and 257 a "remarkable testimony to the constitution of India."

However, Article 365 can be used over zealously. The condition precedent for application of Article 365 in that state must have violated the central directive issued under the constitution. The centre should act "In accordance with the provisions of the constitution and particularly to see it that the federal division of powers on the part of a state, it cannot itself indulge in evasion and destroy the autonomy of regional state."

These Articles 256, 257 and 365 are not derogatory to the federal principle, rather they strengthen co-operative federalism.
in India, and any baseless criticism against Indian federal on the basis of these articles is illogical. 73

One serious charge against the federal character of Indian constitution is levelled that it does not use the expression 'federation' anywhere in the body of the constitution. But if may be noted that the expressions like "federation" or "Union" do not carry any special significance. Dr. Ambedkar make it clear in the constituent assembly as under:

It will be noticed that the committee has used the term 'Union' instead of 'federation'. Nothing much turns on the name, but the committee has preferred to follow the language of the preamble to the British North America Act 1867, and considered that where are advantages in describing, India as a Union although its constitution may be federal in structure. 74

Dr. Ambedkar further said:

"Some criticals have taken objection to the description of India in Article 1 of the Draft constitution as a union of states. It is said that the correct phraseology be
a federation of states. It is true that South Africa which is a unitary state is described as a union. But Canada which is a federation is also called a union. Thus the description of India as a Union, though its constitution is federal does no violation (violence) to usage. 75

Thus, it may be noted that the use of the expressions such as "Federation" or "Union" donot carry any special significance in deciding the nature of constitution. Hence the federal nature of Indian constitution cannot be doubted due to nonuse of the expression "federation" in the constitution.

The federal character of the Indian constitution has also been criticised on the basis of special provisions such as Articles 259 to 253 which empower the parliament to enact law even in state-field. Articles 249 to 253 apprehend four contingencies first, central law in national interest 76; second central law during proclamation of emergency. Third central law with the consrt of states 78. Fourth, central law to give effect to international agreements. 79 In these four conditions parliament can enact law on a subject given in state-list by ignoring the barriers of federal distribution of powers. Critics feel that these provisions are totally
derogatory to the federal principal of the distribution of powers under a federal constitution.

In addition to the above criticism against the federal character of Indian polity, there are some other grounds on which the federal character of Indian constitution has been criticised. These points of criticism are:

a) Single Citizenship
b) All India Civil-Service
c) An integrated Judiciary
d) Uniform election commission finance commission.

But, the provisions relating to these may be regarded as conducive to the working of co-operative federalism and thus, these provisions are not antifederal in character.

SUPREME COURT ON

NATURE OF INDIAN POLITY

Supreme Court decisions have no unarimity on the nature of India polity. They contain frequent reference to the 'federal' or 'quasi-federal' structure of Indian union. But an element of federalism is clear through all the decisions.
The test for a federation was put forth by justice Subba Rao in his minority opinion in state of West Bengal VS Union of India 81 in these words:

"The real test is—whether the said constitution provides for the division of powers in such a way that the general and the regional governments are able within its sphere substantially independent of the other." 82

This test of division of powers was reasserted by the supreme court in Keshvanand Bharti VS State of Kerala 83 Justice Shelat and Justice Shelat and Justice Grover in their joint judgment held that "constitution of India has all essential elements of a federal structure.

The made of the formation of federation makes no difference to its nature. But the judicial opinions dealing with union and its territories particularly emphasize the the mode in which federating units of Indian federation were deliberately created. Justice Gajendragadker said "The constituent units of the federation were deliberately created and it is significant that they unlike the units of other federations, had no organic roots inn the past." 84 Similarly Justice S.K. Das speaking for unanimous courts in Babulal
Parate VS state of Bombay also hold that "name of the constituent units of the Indian union was sovereign and independent in the sense American colonies or swiss cantons were, before they formed the federal union. "It may however be submitted here that the mode of the formation of federation makes no difference to its nature.

There are also cases in which the federal structure of the Indian constitution has been taken as an aid by the Supreme Court to interpret the laws so as to decide the relations between centre & states justice Gajendra, speaking for majority in Atiabair Tea Co. Ltd. VS State of Assam 87 said, "It is a federal constitution which we are interpreting and so impact of Article 301 must be judged accordingly" in Automobile Transport Ltd. VS State of Rajasthan Justice S.K. Das, speaking for majority of the court observed "The constitution itself says by article 1 that India is a union of states and in interpreting the constitution one must keep in view the essential structure of a federal or quasi-federal constitution namely that the units of the union have also certain powers as has the union"

It may be noted here that both justice Gajendra Gadkar in atialiai Tea Co case and justice Das in Automobile Transport case recognised the federal character of Indian
constitution. The former took it to impose a restriction on the legislative powers of both parliament & state legislature while enacting for regulating trade & commerce, the latter held it permissive for the states to raise their revenue through taxation.

The question as to the extent of autonomy which is enjoyed by the states under India federal system arose for the first time in state of west bengal VS Union of India Chief Justic Sinha speaking for the majority said "There is no warrant for the assumption that the states were sovereign, autonomous units which had parted with such power as they considered reasonable or proper for enabling the central government to function for the common good. "The majority of the court also ruled that the constitution of India was not truly federal in character.

But justice Subba Rao in his minority judgment held that "the states are made practically autonomous in ordinary times within the share allotted to them" and further concluded that "I have no doubt that the Indian constitution is a a federation."
The majority view of this case was against approved by the majority opinion in Re Sea Customs Act 1978. Chief justice Sinha said "our constitution does not set up the states as rivals to one another or to the union. Each is intended to work harmoniously in its own sphere without impediment by the other with an overriding power of the union, where it is necessary in the public interest."

Chief justice Beg dealing with Indian constitution in state of Rajasthan VS Union of India observed: Showing the dominance of the centre:

"In a sense, therefore, Indian Union is federal. But the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically co-ordinated, and socially intellectually and spiritually uplifted. In such a system the states can not stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the central government."

In state of Karnataka VS Union of India. Justice untwalia speaking about the nature of constitution said:
"Strictly speaking, our constitution is not of a federal character where separate, independent, and sovereign states could be said to have joined to form a nation as in U.S.A. or as may be the position in some other countries of world. It is because of that reason that sometimes it has been characterised as quasi-federal in nature. 96"

Chief Justice Beg, speaking about the federal structure of the constitution in this case, observed:

"One wonders whether such a system is entitled to be dubbed 'federal' in a sense denting anything more than a merely convenient division of functions operative in ordinary time. The function of 'supervision' is certainly that of the central govt. with all that it implies. 97"

Thus, a persual of various judicial pronouncements reveal that the courts have by and large regarded Indian constitution as a federal, though in some glamour cases like state of West Bengal Vs Union of India. Supreme Court has not recognized it as a true federation. In this connection it is enough to quote Mr. BALLEY who said. "If there is such a thing as a strict, pure or unqualified federal principle, then the hard fact is that there no federations and no federal constitution."
In all the landmark decisions on centre state relations, the states failed to impress the court for their rights. As a result of these landmark decisions, the rights of states in Indian federation have stood considerably attenuated:

1) State property can be validly acquired by the centre.

2) Indirect taxes like customs and excise duties on state property and state manufactures can lawfully be imposed and collected by the centre.

3) State corporations or agencies cannot claim State immunity for taxation.

4) State Government can be virtually compelled by the centre to seek a fresh mandate from the electorate even before the expiry of the constitutional term of the state assembly and

5) Conduct of Ministers (including chief Minister) of a state govt. could validly be made subject of an inquiry by a commission appointed by the centre.
Hence, it would not be an exaggeration to say that in many spheres, state-autonomy has almost reached a vanishing point.

In 1963, the noble champion of state right Justice Subba Rao, was in Cardozo's phrase, only "a gladiator making a last stand against the lions. But his warning so far has unheeded."

"The future stability of our vast country with its unity in diversity depends upon direct adherence of the federal principle, which the fathers of our constitution have so wisely and foresightedly incorporated therein. This court has the constitutional power and the correlative duty - a difficult and delicate one - to prevent encroachment, either overtly or covertly, by the Union on state field or vice versa, and thus maintain the balance of the federation." 

A REAPPRAISAL OF THE JUDICIAL PROCESS

In introductory chapters along with the general trend of federalism and structure of judicial system in India an attempt had been made to highlight the trend of central bias and union supremacy under the Indian constitution, leaving
very little scope of judicial adjustment between the Union and the States.

In subsequent chapters it was tried to indicate judicial attempt to interpret the division of power in such a way as to make the constitution a living organism providing continuous adjustment between various conflicting forces and interests.

An attempt has been made in the present chapter to see whether hypotheses formulated in the beginning of the study have been proved through judicial interpretation of division of power between the Union and the States and if so how and what measures the judiciary has adopted to fulfil its role under a federal polity.

The judiciary in India has been alive from the very beginning to the socio-economic significance of the distribution of powers under the Indian constitution. It has kept in mind the judicial commitment, what Marshall C.J. pointed out, "it is a constitution which we are expounding" and which has to endure for ages. "The role of judiciary is not like a computer and the provisions of the constitution are not mathematica formulas".
The Indian judiciary, though put under detailed and exhaustive constitution, has asserted its creative role in its interpretative role in Moinuddin Vs. state of L.P. \(^{109}\). It was very aptly pointed out that, "constitutional problems are not solved like mathematical equations for they are a part of the problems of social life which do not conform to any mathematical forumulas or rigid logic."

The interpretation of the constitutional law of a people living under an old and complex civilization like ours demands, when solving problems like the present, compromise and skilful adjustments which may not be strictly logical but which will make the constitution workable \(^{110}\). With this judicia awarness, the Indian judiciary has tried to make the living organism of the constitution more and more alive to cope with the future eventuaities and requiriments of the Indian society \(^{111}\).

It would not be out of the context to point out certain handicaps which the Indian Judiciary has to face in the way of acting as definitive trend setter. Justices to the Supreme Court bench are appointed in the late hours of their life and have to remain there for a very smallperiod
A constitutional law student may very well be reminded of American Judiciary which has been able to adjust a constitution basically enacted for feudalistic society with the emerging requirements of highly industrialised society. Certain teams under the leadership of some justices for a considerable period have been able to st certain trends India lacks it.

1. **IN INDIAN JUDGES GET VERY SMALL PERIOD:**

   A comparative study of personnel to the highest court in America and India reveals that within a period of nearly two centuries only a little more than one hundred persons have served American Supreme Court bench, whereas in India within a period of three decades not less than five and half dozen persons have served so far. In America Chief Justice John Marshall had given leadership to the Court for more than three and half decades, whereas in India, the longest tenure so far, has been that of justice B.P. Sinha, who served for a period more than four years as Chief Justice of India.

2. **SWIFT CHANGES IN LEGISLATIVE MOVE:**

   The second handicap is the swift change in legislative move. The constitution has been amended like anything. The parliament has been adjusting between the union and the states
with a trend of strengthening the Union's hands. Some entries have been shifted from state list to the Union list and some others from state list to the concurrent list. This tendency has lessened the chances of judiciary as trend setter. However, one should not be disheartened due to these odds against judicial trend setting and the higher Indian judiciary, to its credit, has set certain trends through its interpretative role.

The perusal of judicial interpretation of legislative entries indicate three clear conclusions:

1. The Indian judiciary has never allowed the division of powers as a shield for individual abdication of responsibility. The judiciary has performed an affirmative role under the Indian federation. By 'affirmative' is meant, "having to do with the validation or legitimation of governmental action. This role of judiciary is desirable and essential in all the federations. Even in America, where judiciary is said to use the distribution of powers between the federal and state governments as an effective measure to protect the propertied class interest, the historical survey of the role of judicial review, however reveals that, "in history as well as in theory the institution of judicial
review is of demonstrated affirmative worth as a means of legitimization. This is true of the role of judicial review in India.

The judiciary as a watchdog of fundamental rights has ruled in most cases against the government in fundamental rights cases. But it has shown due deference in cases relating to economic freedoms or regulation cases. Even the judges who have played negative roles in the invalidation or striking down of governmental action - the role in fundamental rights cases, have not failed to appreciate the socio-economic significance of governmental regulations in the field of economic freedom.

In most of the cases the Indian judiciary has upheld the state or central laws by giving widest possible interpretation to a impugned law. If such a law has been challenged by an individual on the ground of encroaching upon a field allotted to the legislature other than that enacting the impugned law. Judiciary has taken a pragmatic note as to the beneficiary of such laws. It has appreciated the issue involved that if the law is declared violative of division of powers the other legislature
is not the actual beneficiary. Such interpretation, on the other hand, would provide a loophole for individuals to abdicate their responsibility.

The legitimating role of the High Courts and the Supreme Court in India is abundantly clear. The cases of:

1. H.P. Barua V. State of West Bengal
2. Calcutta Gas Co. V. State of West Bengal
3. Sethi Marble stone Industries V. State of Rajasthan
4. Hingir Rampur Coal Co. Ltd. State of Orissa
5. Stat of Orissa v. M/s M.A. Tullock
6. Luddu Mal V. State of Bihar
7. Mineral Mining Co. Pvt. Ltd. V. State of M.P.
8. Ram Tanu Co-operative Housing Society V. state of Maharashtra are pointer to the direction of legitimating role of judiciary with respect to state laws and

The cases of:

1. Mewar Textile Mills Ltd. v. Unsion of India
3. Chaturbhuj Bhai M. Patel V. Union of India\textsuperscript{127}.

4. A.K. Jain V. Union of India\textsuperscript{128}.

In order to fulfill its legitimating role the Supreme Court of India has not even hesitated to pronounce upon policy consideration\textsuperscript{130}. Union of India V.H.S. Dhillon\textsuperscript{129} is glaring example in view of constitutional prohibition the disputed item in that case could not have been taxed and the right course, as Mr. Seervai suggests could have been constitutional amendment giving power to the union parliament to tax that item\textsuperscript{131}. But, the Supreme Court kept in view the economic impact\textsuperscript{132} in the decision i.e. if Union law was disallowed it would not have strengthened the state power, rather individual challenging the Act could have been relieved from paying taxes.

The only justification for Dhillon case is that the constitution should not be interpreted to create vacuum with reference to some matters. A matter enumerated or unenumerated must fall in either of the three lists plus residuum. One may not agree with judicial usuperation of policy consideration, instead of leaving such policy determination to the parliament through amendment, as Mr. Seervai does, one may however, very well appreciate the legitimating role of the Supreme Court. Whether a matter falls in field of the Union Parliament or the
state legislature is a matter of convenience, but such technicality should not lead an item into no man's land and thereby protect the propertied group interest.

3. BALANCING ROLE OF JUDICIARY

The second conclusion from the judicial interpretation of division of powers which is not totally isolated from the legitimising role of the judiciary, is balancing role of judiciary under the Indian federation. As a balance-keeper between the Union and the States. The judiciary has made an attempt to strengthen the weak states in gradual manner through judicial interpretation of the legislative entries.

In some cases, in order to protect state laws the judiciary has favoured wide interpretation of state laws and giving comparatively restricted meaning to the union laws, state laws have been allowed, the judicial trend in this direction is obvious.

In Calcutta Gas Company V. State of West Bengal\textsuperscript{133}. state government's attempt to nationalise gas work by enacting Oriental Gas Company Act, 1960 was upheld by the Supreme Court under entry 24 of State List which was given widest possible
construction whereas entry 52 of the Union list got comparatively restricted interpretation and thereby the court held that there was no conflict between the state law and the industries (Development and Regulation) Act. 1951, a Union law.

The Rajasthan High Court had done the same thing in Sethi Marble stone Industries case dealing with the vires of Rajasthan Minerals concession Rules, 1955, which was held unaffected by mines and minerals (Regulation and development) Act 1948 a central law.

1. The Hingir Rampur Coal Co. Case.\textsuperscript{135}
2. Laddu Ram's Case.\textsuperscript{136}
3. Mineral Mining Co. Case.\textsuperscript{137}
4. Baijnath Kaia's case.\textsuperscript{138}
5. Ganga Nagar Corporation Ltd. V. State of U.P. (1980) S.C.C. 224, and
6. State of U.P. V. Synthetic and Chemicals Ltd. (1980) 2 S.C.C. 441 are indicator of Court's attitude to uphold the State laws, so far as it is possible for it, only in extreme cases where it has not been possible for the court to reconcile between the state and the union laws even after giving broad construction to the state entries, it has disallowed the state laws.\textsuperscript{139}
One may contradict this conclusion by citing some exceptional cases where state laws have been declared invalid for encroachment of the central field.

There are two obvious answers:

1. First the tendency of judiciary has been prostate laws and disallowing of such laws is exception.

2. Secondly in all cases of so called conflict between the Union and the State laws, the former would have prevailed under the constitutional scheme, whatever judicial interpretation has one to save state law is appreciable, as something is better than nothing.

**PRINCIPLES OF INTERPRETATION OF DIVISION OF POWERS**

Judiciary has evolved certain principles of interpretation of division of powers. Some of them like doctrine of "territorial nexus" are exclusively applied in the cases of state laws and thereby impugned laws are saved against the challenge of extra-territoriality. The judiciary has disallowed the principle of 'occupied field as such and has recognised it only as an ingredient to ascertain repugnancy between the Union and state laws. This itself is beneficial to state laws. The principles of interpretation like -
1. Pith and substance. 142
2. Incidental and ancillary powers. 143
3. Harmonious construction. 144
4. Colourable legislation. 145
5. Brod construction etc. 146

Though applicable in cases of impugned laws enacted by both the parliament and state legislatures, but states are special beneficiary as union laws in all cases would have prevailed.

State laws have also been protected by giving strict interpretation of 'nonabstante clauses. 147 Which has been helpful in mitigating Union's domineering role to some extent.

A time of 38 years is very insignificant in the life of a nation and it is too early to conclude anything definitely, but the judicial trend shows that judiciary will not fail to fulfill its role as a balance-keeper under the Indian federation. The judicial commitment seems to be clear in worked of chief justice Gajendragadkar.

"The constitution is an organic document and it is intended to serve as a guide to the solution of changing
problems which the Court many have to face from time to tim. Naturally in a progressive and dynamic society the shape and appearance of these problems are bound to change with the inevitable consequence that the relevant words used inn the constitution may also change their meaning and significance. That is what makes the task of dealing with constitutional problems dynamic rather than static".

With this judicial commitment, the judiciary has laways tried to give dynamic meaning to the constitutional provisions. Sometimes state laws have been given wider meaning and at the other the central laws. In this way a proper reconciliation has been arrived by giving life to the dynamic constitutional problems.

MAINTAINING UNIFORMITY THROUGHOUT THE COUNTRY

EVEN WITH

SILENCE AMOUNTING TO SPEECH

Along with the legitimising and balancing role of the judiciary it has not lacked its commitment to maintain uniformity throughout the country. This judicial willingness to maintain uniformity under a federal polity was burning in the heart of
Mr. Justice Holmes when he wrote, "I do not think the United state would come to an end if we lost our power to declare an Act of Congress void. I do think the union would be imperilled if we could not make the declaration as to the laws of the several states."

The Indian Judiciary has gone to the extend of interpreting silence amounting to speech in order to maintain uniformity throughout the territory of India.

In Gujrat University V. Srikrishna the highest Court of the land disallowed a State regulation enabling the state Government to decide the medium of instruction in higher educational institutions like Universities. There was no Union law under entries 65 and 66 of List I no the point. The supreme Court, however, found practical difficult in allowing states the sole judge of medium of instruction, as it would lead multiplicity of languages in different state Universities making uniformity an impossible task. The court held that determination of medium of instruction in relation to higher education falls under the union power. The judiciary as Dr. G.S. Sharma puts it very persuasively took judicial notice of the language controversy existing in the country at the time decision and consciously wished to put an end to such controversy. The
Supreme Court has very successfully frustrated vice of disintegration and fomenting fissiparous. 152

The significance of judicial process as envisaged at the time of its constituent assembly Debates, has been guiding force for the judiciary in India and it holds significance equally for the future.

To conclude in the words of one of the prominent members of the constituent assembly.

"The future evolution of the constitution will thus depend to a large extent upon the work of the supreme court and the direction given to it by that court. From time to time, in the interpretation of the constitution. The Supreme Court will be confronted with apparently contradictory forces at work in the society for the time being. While its functions may be one of interpreting the constitution.... it cannot in discharge of its duties afford to ignore the social, economic and political tendencies of the times which furnish the necessary background.

It has to keep poise between seemingly contradictory forces. In the process of interpretation of the constitution, on certain occasions, it may appear to strengthen the union at the
expense of the Units and the another it may appear to
champion the cause of provincial autonomy and regionalism. On
the one occasion it may appear to favour individual liberty
against social or state control. It is a great tribunal which has
to draw a line between the individual liberty and social control.

INDIAN FEDERALISM

A MODIFIED VERSION OF FEDERALISM

The idea of federalism in the governance of countries
was introduced almost all over the world as a matter of
expediency each country adopts the federal formula which is
most expeditious to solve its own problems. It is, therefore,
found that none of the two federal systems are identical. The
founding fathers of the Indian constitution also did not adhere
to any theory or dogma about federalism. Gaining from the
experiences of functioning of old federations, such as of the
U.S.A., Australia, Canada, and Swiss, they adopted the policy
of pick and choose what was in the best interest of our
country. Thus, the constitution of India modifies the traditional
principle of federalism to make a working formula to solve the
peculiar problems of the country; In this way it becomes clear
that the nature of federation differs from country to country
according to the prevailing circumstances and peculiar socio-
economic, linguistic, and cultural conditions of a country to
which it has to serve.
The choice of funding fathers to deal with sui-generis Indian problems was bound to opt for the sui-generis federation. "The case of Indian federalism" says Prof. Alexandrowicz, "is certainly sui-generis". The further observes about Indian federation that "thus what happened to be superimposed (in contrast to contractual, initially, was later subject to a through federal re-arrangement. That is why, I submit that India is not simply an administrative federation of quasi-federal character such as L.S.S.R., Mexico, or Brizil, but a sui-generis voluntary association of linguistic communities which took proper after the adoption of the constitution.

Thus to put India together with the L.S.S.R. Mexico, or Brazil into a vaguely defined category of quasi-federalism does not meet the requirements of a systemic classification.

Similarly, Dr. L.M. Singhvi also gives an appropriate account of Indian federalism when he says that "Indian federalism is sui-generis, but the federal distribution and balance of power, the existence of states, their legislatures and govt. and the exercise by them district competence in geographically defined areas within a constitutionally allotted
field are basic and unmistakable federal facts of Indian polity. The dynamics of Indian federalism has its mainsprings in the essential cultural unity, widespread social diversity, constitutional education, economic leverage, and the judicial and political processes. Federalism in India is not mere superstructural contrivances: facets of Indian federalism and its sources go deep down into the foundation of Indian life.\textsuperscript{157}

According to Dr. Ambedkar; Indian constitution could be federal or unitary. In the normal times it could work as a federal constitution and in the times of war or crisis as a unitary one. No other constitution processes this flexibility. This has been done so on account of the situations peculiar to India. First, the British India was administered on a unitary basis. A complete break with the past was not possible. So the movement was from unitarian to 'Union' (federalism with a strong centre).

Secondly, the message that has come down through the history is that whenever centre has been weak, the country soon disintegrates. Hence the necessity for a strong centre.

Thirdly, ours is an underdeveloped country so a mighty effort at development was called for, which could not be
possible without mobilising all the national resources under the central guidance and leadership. Fourthly, in all the modern federations, the accent is on the centre.

Therefore learning from their experiences, the founding fathers wisely opted for a strong centre.

The constitution of India has worked well for thirty eight years. No doubt, every generation has a right to have a fresh look at the constitution, and in fastly changing world, to adapt it to its own needs.

Rajamannar committee report (1971) Anandpur Sahib Resolution (1973) and the West Bengal Memorandum (1977) are perhaps reminders that a fresh look at the centre-state relations is called for. 158

But the questions is: should we adopt and opt for 'dual' or 'Competitive' federalism, which has long since been discarded even in the land of its orgin, or should we evolve robust federalism. Do we choose a regression mode, or a development model of constitutional law and polity.

These are the question which deserve sustained citizen interest and deep study for proper understanding and solution of the problems, we are confronted with.
SPECIAL FEATURE OF INDIAN CONSTITUTION

The federal polity, which our constitution established contains many specialities as compared with other federal constitutions. These are:

Concurrent List of Legislative Powers:

The enumeration of concurrent matters in addition to the Union and provincial lists was the first legislative innovation under the government of India, Act 1935, which has been followed in the present constitution. The experience of other federations like U.S.A., Canada and Austria, which have evolved a concurrent field of legislation through judicial interpretation, inspired the framers of the Indian constitution to mention specific matters which might be said to be of concurrent importance of Union and state legislation.

The constitution enumerates 47 items in concurrent List with respect to which both the union parliament and state legislatures can enact laws.

CATEGORIES OF CONCURRENT MATTERS:

It includes three categories of matters:

1. In the first place, there are matters relating to law and order comprising of criminal law and procedure, preventive
detention, civil procedure and contempt of court excluding contempt of the Supreme Court.

2. The second group relates to personal rights and status such as, marriage and divorce, wills and succession, transfer of property, contracts including partnership and agency, actionable wrongs, bankruptcy and insolvency and trust and trustees.

3. The third category consists of social and economic legislation like, economic and social planning; commercial and industrial monopolies; trade unions, industrial and labour disputes; social security and social insurance and welfare of labour.

GENERAL RULES FOR EXERCISING POWERS IN CONCURRENT LIST:

The concurrent list is devised on desirability and necessity of maintaining in national interest with this view the exercise of powers enumerated in concurrent list are based on four general rules:

1. In the first place, the power of state legislature on all matters of concurrent list remains unaffected until and unless ousted by a union law on the same subject.

2. Secondly, a state law is superseded to the extent of its inconsistency with a union law except where the union law is
prior in date and state law has been enacted with the assent of the president.

3. Thirdly both the union and the state law may remain in force if there is no inconsistency between them.

4. Lastly, where a state law has been entirely superseded by a union law, the subject falls exclusively within the competence of the parliament.

2. SCOPE OR MUTUAL DELEGATION OF EXECUTIVE POWERS:

   The president of India may, with the consent of the government of a state, entrust either conditionally or unconditionally to the government or its officers function in relation to any matter to which the executive power of the union extends.159 Similarly, the government of a state is authorised to entrust state executive power, with consent of the government of India to that government or its officers.160

3. ADJUSTMENT OF FINANCIAL RESOURCES BETWEEN THE UNION AND THE STATES:

   The distribution of financial powers between the union and the states, though based on rigid separation of financial resources, presents considerably of flexible constitutional scheme which may be conducive for keeping balance of revenue resources
between the union and the states.

**SHARING OF REVENUE**

The general rule of federal constitutions that the proceeds of a tax belong to the authority which levies it, has been sufficiently modified in four ways by which union and states may share the proceeds of revenue.

1. In the first place, the proceeds of stamp duties and excise duties on medicinal and toilet preparations as specified in the Union list are assigned to the state although they are levied under a law of the union parliament. 161

2. Secondly, union is authorised to levy and collect succession and states duties other in respect of agricultural land, terminal taxes on goods or passengers carried by rail, sea or air, taxes on railway fare and freights, taxes on transactions is stock exchanges and stock market and taxes on sale or purchase of newspapers or an advertisements published therein, but the net proceeds in any financial year of any such duty or tax are assinged to the states and distributed among them in accordance with such principles of distribution as may be formulated by the Union parliament by law. 162

3. Thirdly, income tax other than agricultural income tax is levied and collected by the union government but has to be
distribution between the union and the states. The percentage and manner of distribution is to be determined by the president in consultation with the finance commission from time to time.

4. Forthly, the Union parliament is authorised to provide that the whole or any part of the net proceeds of the excise duties other than duties on medical or toilet preparations shall be distributed among the states in accordance with such principles as the parliament may determine. 163

Article 280 specifically provides for constitutional machinery of finance commission which may report regarding distribution of revenue resources between the union and states. It is constitutional machinery making distribution of finance between national and state government more flexible by making suggestions for devolution of revenue on the states.

4. ALL INDIA SERVICES:

The constitutional of India does not maintain double system of public services. There is no clear cut bifurcation in the administration of the Union and the state laws as it is in U.S.A. The Majority of public servants are employed by the states, but they administer both the union and the state laws applicable in their respective states. Article 312 provides for All-India
Services which are to be common to the union and the states. Members of Indian Administrative Services, though appointed by the union may be employed either under union government or under the state government.

5. INTEGRATED JUDICIAL SYSTEM:

The constitution of India has a single integrated system of judiciary. It is to be noted that in the united state of America there is dual system of course there is a federal Judiciary with hierarchy of courts with the United State Supreme Court at its head, for trial of cases relating to federal laws and other federal matters; and there is a separate system of Court in each state, headed by the State Supreme Court, for the enforcement of the state laws.

The framers of Indian constitution did not like to interfere with long rooted unified Judicial system in India. The constitution provides for integrated judicial system for administration of both Union and state laws with the Supreme Court at the spec as final appellate court in all matters, whether they relate to union or state laws. Article 247 empowers the parliament to create additional Courts for the better administration of Union laws, but no such Court has, so far been established. It adds further the efficac and effectiveness of integrated judicial system to administer both the state and the Union laws.
The Judicial organisation under our constitution is unified or centralized. Though administration of Justice is a state subject, the appointments to the High Courts are made and their removal is done by the union in the same manner, as Judges of the Supreme Court.

6. **SINGLE CITIZENSHIP:**

Indian federation has a dual polity with single citizenship. It is to be noted that United States constitution provides for dual citizenship the citizenship of U.S.A. and a state citizenship which may result that a state may in certain cases discriminate in favour of its own citizens in matters of right to hold public offices to vote to obtain employment or secure licences for practising certain professions like law or medicine.

The framers of Indian constitution did away basically any of such possibilities by providing a single citizenship. The constitution maintains basic uniformity by providing only one citizenship for the whole of India. It is Indian citizenship and there is no state citizenship. Every citizen has the same rights of citizenship and enjoys same privileges ensuring therefrom, irrespective of the matter in what State he resides.

7. **INTER STATE COUNCIL**

In order to maintain coordination between the States, the Constitution authorises the President of Indian to appoint inter-
State council, Article 263 provides that if at any time it appears to the president that the public interests would be served by the establishment of a council charged with the duty of:

1. Inquiry into and advised upon disputes which may have arisen between states.
2. Investigation and discussing subject in which some or all of the state, or the Union and one or more of the states, have a common interest; or
3. Making recommendations for the subject and in particular recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the president by order to establish such a council and to define the nature of the duties to be performed by it and its organisation and procedure.

It has been thought wise to provide for settlement of disputes of no-legal character by constitutional machinery like inter-state councils, instead of leaving such matter also to be decided by the supreme court. Such agency may assure better co-ordination between states.

The above specialities of the Indian constitution may be said to be the features which embody the spirit of co-operation
between the union and the states. These features present an example of modern concept of co-operative federalism, wherein there is a maximum scope for co-operation and adjustment between the national and the state govt.

**MANY OTHER FEATURES**

There are many other features of the constitution of India, which provide scope for saying it has a 'federation with strong centralizing tendency' or a federation with central bias.

**PARLIAMENTARY LAW IN STATE FIELDS**

The provisions of Articles 249 deal with special circumstances in which parliament can make laws in state fields irrespective of division of powers.

**PARLIAMENTARY LAWS IN STATE FIELDS IN NORMAL TIMES**

There are certain provisions whereby the spheres of legislation allocated to the union by legislative lists can be enlarged at the cost of the states even in normal times. These various ways of expansion of the Union power are:

1. **ELEGISLATION IN NATIONAL INTEREST (ARTICLE 249)**

Parliament shall have power to make laws with respect to any matter enumerated in state list, for a temporary period, if the
council of states declare by a resolution of 2/3 of its members present and voting that it is necessary in the national interest that parliament shall have power to legislate over such matter. Thus legality is given to parliament intervention in state field by resolution of the upper house in national interest.

2. LEGISLATION BY AGREEMENT OF STATES:

If the legislatures of two or more states resolve that it shall be lawful for parliament to make laws with respect to any matters included in State-List, relating to those states, parliament shall have such power as regards such states. It shall also be open to any other state to adopt such law by resolution passed by the legislature of the state. In other words, Article 252 provides for extension of the jurisdiction of the union parliament by consent of the state legislature.

In Union of India V. Valluri Basavaiah Chowdhary (1979) 3 S.C.C. 304. The Supreme Court of India ruled that a central law i.e. Urban Land (Ceiling and Regulation) Act, 1976, passed on resolutions passed by eleven states was a valid law within the meaning of Article 252(1). The adoption of such law by a state, however, is dependent upon the desireability expressed by legislature intending to be abided by it.
(3) **LEGISLATION FOR GIVING EFFECT TO INTERNATIONAL AGREEMENT:**

Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries any decision made by international conference, association or otherbody. The parliament, therefore, can make any law on any subject matter—be it in union, state or concurrent list, for implementation of international agreements.

**PARLIAMENTARY LAWS DURING EMERGENCY (ARTICLE 250)**

During the operation of the proclamation of emergency declared under Article 352 either on the ground of war, or external aggression or internal disturbance, (now armed rebellion, as intended by the constitution 44th Amendment Act, 1978). Parliament is empowered to make law for whole or any part of the territory of India with respect to any matters enumerated in state list.

The parliamentary legislation in state field under Article 250 is dependent upon the continuance of proclamation of emergency under Article 352 and shall cease to have effect on the expiration of a period of six months after the proclamation has ceased to operated. The legislation under Article 250 will attract
a strict construction, and as the supreme court rightly pointed out in union of India V. V.B. Choudhry (Supra), the law enacted under Article 250 can not be adopted within the meaning of Article 252(1).

**APPOINTMENT OF THE HEADS OF THE STATES AND THEIR POWERS**

**AS CENTRE'S AGENTS**

The Governors of federating States in India, who are executive head of the State are appointed by and hold office during the pleasure of the President i.e. the central executive. The Governor as appoints of the national government has been constitutionally provided with extensive powers including the power to reserve a bill for consideration of the president and to report in the failure of constitutional machinery in a State Legislatures and latter destroys the very life of the state Government.

**POWER OF PARLIAMENT TO AFFECT THE AREAS OF THE STATES**

The constitution of India provides for extensive power of parliament to interfere with the states. It is said of the federation of U.S.A. the United States is indestructible states. India, the union is indestructible but the existence of states are not guaranted. The parliament may by law.
1. Form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting territory to a part of any state.

2. Increase area of any state.

3. Diminish the area of any state.

4. Alter the boundaries of any state and

5. Alter the name of any state.

REQUIREMENT OF THE PREVIOUS SANCTION OF THE PRESIDENT

The requirement of the previous sanction of the president for introduction of a bill in state and legislature under article 304(b) of sanction of president under Article 254(2) and Article 31-A may amount to central interference with state legislative powers.

UNION CONTROL THROUGH GRANTS-IN-AID

The union grant to state is discretionary and is fully dominated by planning commission which is a extra constitutional machinery. The efficacy of constitutionally recognised machinery of devolution of revenue from the centre to state has been substantially ineffectuated by the growing and domineering role of planning and commission. The centre may influence and has every chance of interfering with state autonomy due to its strong financial position.
EMERGENCY PROVISION

The constitution gives wide power to the national government during the operation of the proclamation of emergency. Practically, federal polity is converted into a uniatery system during the contemplated under the constitution.

1. Emergency on account of national security. \(^{169}\)
2. Failure of constitutional machinery in states and \(^{170}\)
3. Financial emergency. \(^{171}\)

All the three affect the state autonomy. During the first and third, however, state government function as separate governments. Only their autonomy is curtailed.

In failure of constitutional machinery, the very existence of the state government is lost and a state in which such proclamation is made, is governed directly by the central government.

UNION CONTROL OVER STATE ADMINISTRATION

Besides, Union dominance in legislative fields and financial matters, the constitution empowers the union to issue directives to the states as regards the exercise of their executive authority. \(^{172}\) The union is especially empowered to
issue administrative directives to the states for following purposes:

1. To ensure due compliance with union laws and existing laws which apply in that state,

2. To ensure that the executive power of the state does not interfere with the exercise of the executive power of the union.

3. To ensure the construction and maintenance of means of communication declared to be of national or military importance.

4. To ensure protection of the railways within the states.

5. To secure the drawing and execution of schemes for the welfare of the scheduled tribes in the state.

6. To ensure the provisions for adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority group.

7. To secure the development of the Hindi Language.

In order to make these directives more effective, the constitutional sanctions are also provided under the constitution and in case of failure on the part of any state to carry out the union direction, it is lawful for the president to suspend the state government and assume to himself the powers of the government concerned.
A purusal of Indian federation reveals that constitution bears some characteristics which may be found in traditional federations. It also possesses some distinguishing features which seem to have been a modification of traditional patterns.

It contains, some provisions, however, which may be termed as unfederal. But such features which may be objectionable from federal angles seem to have been justified by the special circumstances and peculiar socioeconomic, linguistic and cultural requirements, of India society. 173

The constitution, no doubt, has central bias. The unusual features however, may be justified on following grounds.

1. First in view of multilingualism, many races many religions, minorities backward classes and tribunals, only a strong central government could weld these diverse element and interest into a homogeneous entity and for star felling of national solidarity.

2. Secondly the stagnant economy of the country under a foreign rule needed solute national direction for its regeneration and.

3. Lastely India's past history of intricate strife and disruptive regional forces persuaded the retention strong central hold in administration of country.
FOOTNOTES TO CHAPTER-1


2. W.S. Livingston, Supra note 15 at 1.


5. "According to Dr. Chandra Pal the 'cooperative federalism' can be defined as "system by which state and national governments supplement each other and jointly or collaboratively perform a variety of function" see Chandra Pal, Centre state relations and cooperative federalism, 9 (1983).

6. See A.H. Birch, Supra note 16 at 30.4


8. Ibid, at 119.

9. Article 245.

10. List II of seventh Schedule to the constitution of India.

11. List I of the seventh schedule to the constitution.

12. Article 73.

13. Article 162.

14. Entry 82 of the Union List.

15. Entry 85.

16. Entry P. 86.

17. Entry P. 87.
25. Entries 45 to 63 of the state list.
26. C.A.D.
27. Provision to Article 368.
28. See the Indian constitution, Article 245 to 393 and seventh schedule, List I., II and III.
29. The Indian constitution is a written documents of 395 Article and Nine Schedules.
30. The Indian constitution is supreme law of the land because of the following reasons.
   i) It was provided by the constituent Assembly which was a representative body of the people of India. Hence the constitution is provided by the people of India.
   ii) It constitutes India into a sovereign Democratic republic.
   iii) All the three organ legislature judiciary and executive of the government derive their existence and power from the constitution.
42. I.D. P. 32.
43. C.A.D., VII. P. 1132
44. C.A.D. XIII, P. 952
45. I.D. P. 186
46. GRAVILLE ALSTIN, Op. Cit. at 187. It may also be noted here that the Union constitution committee presided over by Pandit Jawahar Lal Nehru met on June 6, 1974 to consider whether the constitution would be a unitary or a federal one. The committee consisted of Dr. Rajendra Prasad, Maulana A. K. Azad, Pandit Govind Vallabh Pant, Mr. Jagjivan Ram, Dr. Ambedkar, Sir Alladi Krishnaswami Iyer, Dr. K. M. Munshi, Mr. K. T. Shah, Dr. Shyama Prasad Mukherjee, Mr. Gopal Swamy Iyenger. This imposing list of starred dignitaries decided at that time that the constitution should have a federal structure with a strong centre. The debates of the constituent Assembly show that these statements left the indelible mark on the draft of constitution as it emerged in November, 1947.
47. K. C. Where, Supra Note 34 at 27, where, modern constitution 29 and 51 (1964).
50. Invonjeenings, Supra note 27 at 1.
iv) Any law which violates any provision of the constitution shall be void ab initio.

31. See Ibid, Article 368(2) (atoe)
32. Ibid, Article 131.
34. C.A.D. XI 5, P. 654 (L.K. Maitra).
35. At one stage, N.v. Godgil declared, I doubt whether there is a single individual here on outside, or a party here outside which has stood for or even stand for a completely unitary state" C.A.D. XI, 5 P. 657.
36. Refering to the absence of any conflict between the 'Centralists' an the 'Provincialist', Austin referred to the superficiality of the debate". "Assembly members loudly demanded increased revenue for provincial governments, yet they agreed that the union should collect the money and then distribute it among the units. "Granville Austin, Op. Cit, at 186-87.
37. C.A.D. IX., 7 P 745.
53. R.S.Gae "Administrative Relations between the Union and the states". In S.N. Jain and others (ed). The Union and the state 257(1972).
58. Benjamin, N. Schoenfiel, Federalism in India, (1969) In this book schoenfiel gives a very researching account of foreces marchine towards the formation of Indian federation and making imprative for the framers of the constitution to adopt the federal system.
59. See Chandra Pal, Centre-State Relations and co-operative federalism 73-278(1983) convined by Birch, the term "co­oertive federalism has also been applied to Indian by or host of other political scientisant and constituional lawyers see A.H. Birch, Op. Cit. 141-44(1964) Granville Austin,
The Indian constitution-corner-stone of a nation 187(1966).
M.P. Jain, Indian constitution at law, 334(1978).

60. C.H. Alexandrowicz "Is India a Federation" 3 International

61. K.C. Where, federal government, 27(1967). This argument
of Prof. Where against Indian constitution is based on
Article 3 of the constitution.

62. K. Santhanam, Union-state relation in India 7(1959)

63. K.P. Bombwall, "Lineament of non mature federalism" In
K.R. Bombwall and L.P. Chaudhary, Aspects of Democratic
government and pollits in India (201), (1968).


65. Professor alexandrowicz looks upon the reorganisation of
India on a linguistic basis as an asseration of the federal
principle. The Status of the states Vis a vis the centre
has been strengthened by the reorganisation of states and
the establishment of stable and viable units. See C.H.
Alexandrowicz, constitutional development in India
167(1957).

66. S.R. Sharma, Indian federal structure "A compative
study, (1867).

67. P.B. Mukerji, Three elements problem of the Indian
constitution 71(19722).

68. See K. C. Where, Supra notes 64 at 27.

69. C.H. Alxandrowicz, Supra note 49 at 400.

71. Morris Jones, Supra note 48 at 40.

72. P.B. Mukherjee, Suptra note 70 - at 132.


74. C.A.D. Vol. VII. P. 43.

75. Ibid.

76. See Indian Constitution, Article 249.

77. Ibid, Article 250.

78. Ibid, Article 251.

79. Ibid, Article 253.

80. See Chandra Pal Supra note 76 at 243 - 265


82. Ibid, At 1269.


85. A.I.R. 1960 S.C. 15

86. For Example the American Federation though formed of component states has been pointed out to derive its power from the people. See Mc Culloch V. Maryland, 118 1974 wheat. 316.

88. A.I.R. 1962 S.C. 1402 see also the justification for the use of expression of states' gives the nature of the structure created by the constitution. A part from the word 'Union' the constitution has no other word expressive of a federal from the government. The constitution is federal in from but it is not a federation based upon agreement of the component states. A.I.R. 1956 cal. 378.


90. Abid, per Subba Rao J. at 1269.


92. Ibid at 1781. (Per Majority Singh. C.J.)


94. Ibid at 151.


96. Ibid at 151.

97. Ibid at 111.

98. K.H. Bailey, Summary report of proceedings international legal conference 29 (New Delhi, 1953-54)


100. See state of West Bengal Vs Union of India. A.I.R. 1963 S.C. 1241.
104. See Karnataka State Vs. Union of India A.I.R. 1978 SC. 68.
106. B.N. Cardozo, Selected writing 353 (1947).
108. Mc Culloach V. Maryland.
110. Ibid.
111. As early as in 1952 the supreme court of India made it clear that 'They (constitutional provisions) are not just dull, lifeless words static and hid bound as in some mummified manuscript but bring flames intended to give life to a great nation and order its being tongues of dynamic fire potent to mould the future as well as to guide the present' (1952) S.C.I. 55(97).
113. Beard, Economic Interpretation of the constitution. Mr. Beard points out that in early age the supreme court use nationalism to which down state regulation and in 1930
states right to frustrate the nation regulations and it was
done so to protect the interest of the propertied groups.

114. Black, Supra, Fn 5 /P 85.
115. Ibid, P 87.
116. Gadbois, George H, Supreme Court Decision-making (in)
117. A.I.R. 1953 Assam 249, discuss in chapter VII (A).
118. A.I.R. 1962 S.C. (1044)
119. A.I.R. 1958 Raj 140.
126 A.I.R. 1959 Cal. 89.
128. A.I.R. 1970 S.C. 267. (All cases have been elaborately
discussed in chapter VII (A) for other cases on the same line
see chapter VII B.C.D.E.)
130. Entry 86, Union List.
131. Mr. Seervaj Forcefully argues that agricultural wealth was
thought by the framers to be exempt from taxation of both
the parliament and state legislatures. In view
constitutional scheme, he suggest that it is for the people through their representative to decide whether a item excluded from the sphere of either legislature should be converted to a taxable item or not.


134. A.I.R. 1958 Raj. 140


136. A.I.R. 1965. Pat. 491


138. A.I.R. 1968. Rat 50 (All cases from no 26-31 have been discussed in chapter VII B. C.D.)


140. Discussion in chapter VIII.

141. Ibid

142. Ibid.

143. Ibid

144. Ibid.

145. Ibid.

146. Ibid.

147. Ibid.


152. See Education Planning, successed in chapter VII (E)

153. C.A.D. Vol. VIII, P.O. 223-24 (Sir Alladi Krishnaswami Ayyar.)

154. For difference between the Canadian federalism and the Australian federalism see invorjennings, constititional laws of the commonwealth, 267-268 (1957).

155. Mr. Chatterjee also of state was, therefore, unsuitable in India. A federal structure was called for only a federation could reconcile the large common needs with national or regional differences. A federal system alone could combine central supremacy in its regulating larger common interest with decentralisation of powers and provincial home rule in other matters" See, P.N. Chatterjee, "The Problem of union of the states of India". Modern Law Review, Vol. 128, 129, 1971, PP. 178-183.


158. Therefore, the decision of the government of India to appoint Sarkaria Commission to review the working of centre-state relations and recommend such changes or other measures as may be appropriate, is timely indeed. For terms and reference of the Sarkaria commission, see the ministry of home affairs notification No. IV/11017/1/83 C.S.R. dated the 9th June, 1983.

159. Article-258.

160. Article - 258A.

161. Article - 268.

162. Article - 269.

163. Article - 272.

164. Article - 312.

165. Discussed with details in chapter IV.

166. Article - 155.

167. Article - 156.

168. Article - 3.

169. Article - 352.

170. Article - 356

171. Article - 360.

172. Article - 256 & 257.