CHAPTER III

UNITARY BIASESS VIS-A-VIS LEGISLATIVE RELATIONS

A. INTRODUCTION

In this chapter it is intended to examine only those constitutional provisions governing Centre State Relations which have unitary biasness and alleged to be not in tune with the basic object of Indian Federalism i.e. to attain unity in diversity, and socio-economic progress of the entire nation and institutionalisation of democracy. Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, warned the members that we Indians were still not a nation; we had yet to be one. The Centre State Relations is one of the most sensitive spots which can make or mar our prospect to progress as a prosperous united nation. Time has now arrived to examine whether Indian population has stood as one nation particularly during hey day of the nation. Moreover,
"the establishment of a strong central government has coincided with the period of comparative prosperity for India. There would, therefore, be a natural tendency for the constitution makers to favour centralising political power at the cost of the autonomy of states. As the majority population are Hindus, with historical memories of the glories of the Gupta era, we may expect to find centripetal forces in the form of Government and in the way it works"¹ It will also be examined whether memories have worked among the Hindus of India as a cementing force between them.

Furthermore, due to the vastness of the country and a heterogenous society, economic and cultural differences demand separate treatment of the same problem in different parts of India. Here we may expect a centrifugal tendency counter acting the centralising tendency already expected.

B. UNDERLYING PHILOSOPHY

Due to different reasons already enumerated in the preceding chapter the Union Constitution Committee submitted on 4th July, 1947 the following recommendations:

(i) The Constitution should be of federal structure with a strong centre.

(ii) There should be three exhaustive lists vis - Federal, Provincial and concurrent with residuary power to the centre.²

If there is anything which can be considered as the basis of federalism it is the constitutional scheme of distribution of powers between the two levels of Government, - Federal and constituent States. This determines in a very large measure, the nature, content and scope of autonomy of the Constituent States who are considered as the heart and soul of federation. Both for a proper understanding of the nature of Indian Federalism, and more precisely the relations between the union and the constituent states, and the extent of autonomy enjoyed by the constituent states in India, it is absolutely essential to go into the question of distribution of powers between the centre and states. The scheme of distribution of powers in India has been greatly influenced by the following factors:-

1. Tradition of strong central Government.
2. Mode of forming federal policy.
3. Influence of operation of centripetal forces.

² C.A.D. Vol. 4, p.750.
4. Need for counteacting and combating the centrifugal forces.

5. Conspicuous absence of the doctrine of state rights;


7. Need of economic backwardness and prominent role to be played by the State in accelerating economic development and accomplishing the goal of welfare states.

8. Accumulated experience about the working of federal policy elsewhere.


All these factors have remarkably influenced the scheme of Union State Relations. Functions and activities of the state never remain the same for ever. They are bound to undergo a change with the change of society. In the light of this the actual mechanism of the Government and its modus operandi need to be suitably modified to keep pace with the changing situation. Federal policy and particularly the Union State Relation is no exception to this. This is the reason that there may be a difference between the concepts and practice of the working of the Indian constitution governing the union state relations.
Functions and activities of the state is bound to change from time to time. Growing needs and requirements of people and their aspirations are bound to bring about corresponding changes in the dimensions and activities of the state. The adequacy and relevancy of the distribution of powers between the centre and states are to be examined in this context. Although on the surface it looks that the scheme of distribution of powers is definitely and markedly biased towards the centre it is not reasonable to deny that there is an element of flexibility inherent in the very scheme of the distribution of powers in India. Numerous are the critics who have come down heavily on the Indian federal system because of its over central biasness. Considering the language, tone and tenor of these critics one cannot help observing that the critics have been very niggardly in realising and admitting this element of flexibility which is very much implicit in the scheme of distribution of powers.

What is this element of flexibility which is hidden in the federal scheme of the distribution of powers? Is not the scheme of distribution of powers helpful and congenial enough to ensure a substantial area where both the centre and states can act freely in their respective spheres without the later being haunted by the fear of
encroachment upon or domination by the centre? Has not the scheme of the distribution of powers provided the states with a position befitting them as the constituent units in Federal set up of India? Is the Scheme of distribution of powers entirely inimical to the autonomy of States? Have not the States been able to operate with a considerable degree of autonomy within the constitutional framework of the scheme of the distribution of powers?

For giving considerate and balanced answers to these questions, it is necessary to consider not merely the existing constitutional framework of federal set up but also the actual operation of the federal system and factors Constitutional and extra-constitutional factors, influencing and determining the federal system.

C. SCHEME OF DISTRIBUTION OF LEGISLATIVE POWER

Regarding distribution of legislative power

Prof. Wheere expresses his views as follows:-

"The Constitution of 1950 contains 3 legislative lists. The first enumerates under 97 (Nov. 98) heads, the subjects over which the Union Legislature has actual exclusive control; the second under sixty six (now.62) heads, those under the actual exclusive control of the
states; and the third, under 47 (now 52) heads, the subjects upon which both union and state legislatures make laws. Here is an enumeration more complete than anything attempted in the four federations. The matter in the concurrent field are, on the whole, not unexpected.

The provisions which deal with a conflict between general and regional laws are interesting. In general, they require that regional laws on concurrent subjects must give way to the laws of the general Government to the extent of their repugnancy to such laws. But it is possible, if the President of India consents, for these regional law on the concurrent subject to prevail inspite of repugnancy. Thus there is room for flexibility in the exercise of the concurrent jurisdiction and the central Government is not inevitably supreme in case of conflict. Yet, as it rests with the president to decide whether the general legislature is to be supreme, in this way a potential exclusive control is vested with the general Government.3

D. LEGISLATIVE RELATIONS AND FACTUAL CONDITIONS

In respect of distribution of legislative powers between the centre and states, Indian constitution exhibits some unique features. K.R. Bambwali observes:

"Following the precedent set by Government of India Act 1935, the constitution makes perhaps the world's elaborate and detailed distribution of powers between the federation and its constituent units." 4

Chapter I of Part XI which contains Arts. from 245 to 253, provides for general distribution of legislative power between the Union and States. The federal structure of the Government of India Act 1935 led the Constituent Assembly to adopt the same pattern of division of powers between the union and the units with few exceptions 5 in the constitution of India. The object of the Government of India Act 1935 was to establish a Government of federal structure with a strong centre. The early history of

5. Several colonial provisions, such as those relating to the authority of the crown, the powers of the secretary State etc. were deleted. A.R. Sharma. Prelude to Indian Federalism. p. 273, 281.
Independent India, the administrative task created by the partition and the transfer of power, food crisis and a difficult economic situation pointed to the need for a strong central authority which could keep the administrative structure from disintegrating. There was also problem of integrating Indian States with the rest of the country. A unitary form of Government, which would have taken away completely the autonomy of the states, and other princely states which have enjoyed autonomy till then, would not have proved acceptable.

The political setback due to partition, serious economic crisis and communalism are some of the major socio-economic and political factors which jarked, at the very start, the national life of our people and consequently the attitude of the framers of the constitution changed overnight from having a loose federal system to one having strong centralising tendency.

The major concern of the makers of the constitution of India was to devise a workable and democratic system of Government suited to the vital needs of the country of unity in diversity and of development. When India won the independence as a national asset, she was also overburdened with various problems. A memorandum of 1947 to the Cabinet
enumerated these problems as an agricultural production policy, price control of agricultural products, the establishment of central higher technical institutions, food distribution and the setting up of administrative machinery for agricultural and industrial development. To overcome such and other problems and to ward off any force of diversity which works against the uniting force, the makers of the constitution established a federal system but having unitary bias.

While providing for a strong centre, it was not the aim of the founding fathers of the constitution to deprive the states of their autonomy in the areas allotted to them. V. Gopalaswami Ayyanger who favoured a strong centre remarked.

"We should make the centre in this country as strong as possible, leaving a fairly wide range of subjects to the provinces in which they would have the utmost freedom to order things as they like."  

Following Government of India Act. 1935 and with a view to establish some sort of federalism but not an orthodox one, the framers of the constitution distributed

6. Comments on the provisions contained in the Draff constitution of India, Constituent Assembly of India 1948. p.2.
the legislative subjects between the union and the states in chapter I of part XI of the constitution and the subjects are enumerated in the Seventh Schedule of the constitution.

The first two Articles i.e. Art. 245 and 246 deal with the most central aspect of the distribution of powers, the competence of the Union and Provincial legislatures as elaborated in the legislative lists. The parliament has power to legislate for the whole or part of India and the state legislatures have power to legislate for the whole or part of the individual state. The legislative power of parliament and state legislature have been divided into 3 lists in the VII schedule of the constitution, which sets the guideline of the power structure and relations - legislative as well as the executive between the Union and the States. It lays more stress upon power sharing than upon power distribution, a concept deemed essential by the conformist federalists. 8

List I which is called the Union list contains 98 (earlier 97) items, list II the states list contains 61 (earlier 66) items and the list III the concurrent list contains 52

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It is to be noted that increase of items in one list or decrease in another list is not due to the abolition of any legislative subject or inclusion of any new subject but transference of subject from one list to the another list by amending the constitution six times. The gradual reduction of items in the state list and the consequent increase in the central as well as in concurrent list is undoubtedly an indication of the more centralising tendency.

It is said that the subjects of national importance are included in the list I and in the light of demands for more state autonomy it deserves the closest possible scrutiny. The first seven entries except item No. 2A which relates to deployment of armed personal of that list relate to defence (entry 2A have been included by the 42 Amendment Act 1976) and there can be no dispute that the parliament should have exclusive control over the subject. However, the Rajamannar Committee in its report has held that entry 7 which relates to "industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of War" is loosely

   (2) Sixth Amendment Act 1956.
   (3) 32nd Amendment Act 1956.
   (4) Fifteenth Amendment Act 1963.
   (5) 32 Amendment Act 1973, and
   (6) 42nd Amendment Act 1976.
worded and hence may include even industries which are not directly connected with defence and hence should be amended to be precise. True, broad interpretation of the item may include even agricultural industry as food is very essential for soldiers also. But it is very unlikely that the Supreme Court will give such a broad interpretation as it will have to give a harmonious construction to all the entries. Entries from 10 to 16 which relate to foreign affairs from which the autonomist do not claim any share. Next there are 21 entries which are mostly under the Home Ministry and which are intended to ensure the security and the well being of India. Entries 8 and 9 relating to C.B.I. and preventive detention in connection with defence etc. are obviously exclusive central subject. So are entries 17 to 21 which deal with citizenship, extradition, passport and visas, pilgrimage to places outside India and piracies. Entries 68 to 72 deal with survey of India, census, all India services, pensions and elections which are matters of common concern. These topics are of common interest both of the central and states governments and therefore, consultation with the states are justified. Entries 22 to 31

deal with communications where the parliament should legislate, but before parliament declares under entry 23 any high way as the National High Way, the states through which it runs should be consulted. Entry 27 empowers parliament to declare any port as a major port which then becomes exclusive central subject. The last 5 items are merely ancillary and consequential matters about which no states need to bother. This leaves out 25 entries relating to economic affairs and 17 dealing with finance and 8 with social services. Of these transfer of future market from item 48 to state list, modification of entry 52 so as to restrict it to industries of national importance or of all India Character\textsuperscript{11} transference of entries 53 (Regulation and Development of oil fields and mineral oil resources etc). 54 (Regulation of mines and mineral development etc.) 55 (Regulation of labour and safety in mines and oil fields) to state list and modification of item No. 67 so that state can become authority to deal with ancient and historical monuments and records which are not of national importance were suggested by the Rajamannar Committee.\textsuperscript{12}

\textsuperscript{11} Commenting on too much centralisation in the economic areas Palkhivala has deplored that the expansive use made by the centre of entry 52 list I is gradually transforming the industries into central subject without amendment of the Constitution.

\textsuperscript{12} Ibid. pp. 29-31.
The Rajamannar Committee in its report\textsuperscript{13} surveyed the history and importance of the residuary powers in India and suggested that like the constitution of U.S.A. Australia, Switzerland and Canada, a federal constitution should vest the residuary power in the hand of the state. Similar view has been expressed in the Memorandum submitted by the West Bengal Government.\textsuperscript{14} But history indicates that in 1776 when the American Constitution was being framed,\textsuperscript{13} independent colonies were not willing to surrender their sovereignty. It was external danger that impelled them to come together subject to the condition that residuary power was vested in the States. Again, when Canadian Constitution was being framed in 1866, the framers came to the conclusion that the American Civil War was due to vesting of residuary powers in the States. Therefore, in Canadian Constitution the residuary powers were vested in the centre and when the Australian Constitution was being framed the residuary powers were vested in the states. But the Bolsheviks did not vest residuary powers in the republics but in the centre, the communists were anxious to bring into being a strong centre because the internal situation in the U.S.S.R. was similar to that of India. Therefore the residuary power were vested in the centre.\textsuperscript{15}

\textsuperscript{13} Ibid. p. 43-44.
\textsuperscript{14} A Memorandum on C.S.R. Government of West Bengal. p.2.
Now the residuary powers make the outer space of the exclusive powers of the Union. These powers are unlimited by any categorisation or enumeration, and for that matter, include all matters which the framers of the constitution could not foresee and include in the Seventeenth Schedule, or could not comprehend in the world they live in e.g. outer space, a trip to moon. The parliament's power to legislate under entry 97 of the central list has been fortified by Art. 248. The S.C. of India also gave expansive interpretation to the centre's residuary power.

The state list II which originally contained 66 items has been reduced to 61 during 1950 and 1976 by amendments of the constitution. The exhaustive enumeration, the definitive precision of 66 (now 61) entries of the State list, the non-obstante clauses of

17. Art. 248 provides exclusive power to parliament to make any law with respect to any matter not enumerated in the concurrent list or state list including a law imposing a tax not mentioned in either of those list (quoted from Constitutional Development since Independence (H.L.I.P. 225). Also see Shrikrishna Bhargava V. Union of India. A.I.R. 1966, S.C.619.
Art. 246 and the mention of specific circumstances permitting parliamentary initiative in respect of the State list matters leave no scope for any judicial contribution or interpretative expansion of the State Legislative Powers. But in spite of this, the S.C. attempts to give a purposive, constructive and liberal interpretation.

Entries relating to administration of justice, education, forest, protection of wild animals and birds, weights and measures were shifted to the concurrent list. Moreover, the powers given by item 2 and 3 of the list had been shrunk in as much as the power to legislate under item 2 is subject to item 2A of list I, and from entry 3 the power to legislate in the administration of justice, constitution and organisation of all courts, except the Supreme Court and High Court shifted to list III. The subjection of item 2 of state list to item 2A of the central list means that the central Government has got power to deploy its armed forces or any other force (like C.R.P.F., B.S.B.P.) in any State.

20. Such circumstances are mentioned in Art. 249, 250, 252, 253(b), 256(c) and 257 of the Constitution.

in the aid of civil power without consultation with the state and the powers, jurisdiction, privileges and liabilities of the members of such force can be determined only by the central government. It is a serious curtailment of power of the state Government in maintaining the public order the justification or otherwise will be reviewed in the chapter - meant for it. Moreover the question as to how far the transfer of items like education, forest etc. from the state list to the concurrent list has reduced the powers of the state will also be examined later.

List III contains 51 subjects upon which both the parliament and the state legislature have got power to legislate. The scope of concurrent legislation by parliament is more or less unrestricted, and approximate to be the sole prerogative of the centre. In case of repugnancy between the laws made by the parliament and state legislature on the same subject of concurrent list, the law made by the parliament shall prevail over whether central law was made before or after state law.

22. Number of subject rose for 47 to 51 as the 42nd Amendment included items Nos. 11A, 17A, 17B, 20A, 82A and deletes entry No. 25.

23. Art. 246(2).


However, a state law made subsequent to the law made by the parliament on a concurrent subject may prevail over central law if such law is reserved for president's assent and received such assent. But the parliament has got unfettered right to oust such law by subsequent enactment. It is interesting to note that 26 entries in all were amended through six constitutional amendments including 42nd amendment Act 1976 which alone amended fifteen entries of the seventh schedule of the constitution, and that too at a particular period when the states were clamouring for more state autonomy. The Rajamannar Committee, constituted by the Government of Tamil Nadu, devoted one full chapter, namely, chapter IV to legislative field and noted that the union list "had stolen a number of items" from the provincial list and the concurrent list of the seventh Schedule of the Government of India Act, 1935. The Committee was of the opinion that the state legislative powers were curtailed under the constitution. Consequently they suggested certain modification into the lists of

26. Ibid.
28. Section 48 of list correspond to entry 27 of list II

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seventh schedule of the constitution. From the Union list item 40 (state lotories), 48 (future market), 53 (mineral and oil resources), 54 (labour safety in mine and oil field), 67 (historic monuments and records), 76 (state audits) and 84 (excise on medicinal and toilet preparations) were sustained to be transferred to the state list to retain the state autonomy. Further, they suggested transference of some items from the concurrent list to the State list to reinforce the State list. This 42nd amendment bill did not even follow the normal procedure (i.e. the amendment bill was normally referred to a select committee or a joint committee) eventhough it affected large scale amendments. Moreover, the state of Assam, Mysore, Orissa, Maharasthra, Travancore and Cochin, West Bengal, J & K. Hills etc. either did not take part or refused to take part in the ratification of this bill. One of the reasons for such abstinence could be that these states were either ruled by non-Janata Governments or regional but non Janata Government, while the Janata party came to power in the centre by overthrowing the National Congress. This asserts atleast one fact that a bill is either supported or opposed as per direction of the high command of the party introducing

the bill in parliament without asserting the need of the amendment. This is fortified by the further fact that a bill took on an average two and a half months for the parliament to pass the amendment bill, but the discussion were over within hours or a day or days. Prof. Irving Younger of the Cornell University's suggestion is that "our judge should involve a doctrine that no law is validly enacted unless legislators voting for it have read it." According to M.A. Palkhiwala by applying this test 95 percent of the laws passed by the Indian Parliament and the State Legislatures would have to be invalidated. The state notification consumed on an average 3 months.

E. WORKING RELATIONS

Of the five amendments which affected union state legislative relations, the third amendment Act 1954, for the first time made adjustment in the distribution of legislative power relating to trade and commerce, Act 369 authorises parliament to make law for a period of five years.

30. M. Palkhiwala - We the people. p. 48.
31. Ibid.
32. Ibid.
years from the commencement of the Constitution with respect to certain matters in the state list as if they were matters in the concurrent list. Art. 369 deals with trade and commerce within a state, and the production, supply and distribution of Cotton and Woolen textiles, few cotton (including ginned cotton and unginned cotton or Kapas, Cotton seeds, paper (including News papers), food staffs (including edible oil seeds and oil); Coal (including coke and derivation of coals), iron steel and mica. The above mentioned amendment substituted a permanent concurrent power in the above area by introducing amendment in entry 33, list III. There are two changes in entry 33, list III: Firstly, it did not include all those commodities specified in Art. 369. It excluded cotton except raw cotton, woolen textile, paper, coal, iron, steel and mica. Now these subjects formed part of the state subjects. Secondly, this entry added imported goods of the same kind as the products of centralised industries so as to allow the centre a control over the development of such industries. This provision served out of the Union Legislative Power in entry 41, list I and allowed a concurrent jurisdiction of parliament and the state legislature in this regard. It also added raw jute in the concurrent subject. The effect of the 3rd amendment was that the exclusive field of state
legislature, which was temporarily shadowed for five years, was transferred permanently to the concurrent field with certain minor adjustment in favour of the State. Thus a subject which was designed to be permanently a state subject was divided into concurrent and state subject and thereby gave indirectly more power to the centre.

The Sixth Amendment Act, 1956 inserted a new entry 92A in list I and a consequential change thereto was effected in entry 54 of list II and Arts. 267 and 268. This empowered the parliament to make law relating to taxes on the sale or purchase of goods, other than newspapers where such sale or purchase takes place in the course of inter-state trade and commerce.

In the same year another adjustment effected in the centre-state legislative relations was through the Constitution (Seventh Amendment) Act, 1956 which brought the following changes:

(I) List III entry 42 included acquisition and requisitioning of property with a purpose to remove overlapping of entry 33 of list I, 36 of list II and 42 of list III which essentially dealt with the same subject.
(II) Entries 12 of list I, 12 of list II and 40 of list III give parliament legislative power over certain matters which were declared by parliament by law to be of national importance. This meant that any slightest alteration in or addition to, the list in that Act would require another Act of parliament. In order to avoid this the words "declared by parliament by law" were substituted by "declared by or under law made by parliament.'

(III) Entry 24 list II was made subject to entries 7 and 54 of list I.

The constitution (Seventh Amendment) Act 1956 in effect did not swing for or against the centre-state legislative relations but it made changes to clarify the provisions.

The (Fifteenth Amendment) Act 1963 inserted in entry 78 of list I the words "(including vacation)" which relates to constitution and organisation of High Courts. The statement of objects and reasons does not spell out why this change was introduced but it seems that in order to maintain uniformity throughout the country regarding
vacation of the High Courts such amendment was made. The Constitution (Thirty-second Amendment) Act, 1973 added "the University established in pursuance of Art. 371F" in entry 63 of list I.

The Constitution (Forty-second Amendment) Act, 1976 in addition to the inclusion of Art. 257A and entry 2A in Union List which fortified the hands of the Central Government removed state subjects such as education, forest, administration of justice, protection of wild animals and birds, and weights and Measures to the concurrent list and reduced further the state autonomy.

The effect of the 42 amendment Act 1976 was to bring more centralised tendencies in the federal constitution of India. Some of the powers which were earmarked as the State subjects as far back as the Government of India Act, 1935, were now omitted from the exclusive jurisdiction of the state. This was the first time in the history of the

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Constitutional amendment that the distribution of the legislative powers was subjected to a large scale changes even not following the minimum requirement of emending process.

In reviewing the effect of these amendments the period 1954 to 1976 can broadly be divided into three periods. In the first decade there were four constitutional amendments which transferred the exclusive power of the state in three cases to the Union list and in two cases to the concurrent list and thus more unitary tendency was effected at the cost of state power. The second decade witnessed only one amendment effecting a minor adjustment in favour of the centre. Thus the period of first two decades may be said to be period of easy sailing in the life of the federation in India. The opening of the third period saw for the first time a large scale operation where the State subjects were transferred either to the central list or to the concurrent list. This period, being a turning point in the history of Indian Federalism, witnessed strains and stress in the union state relationship. It may be concluded that in all these years the balance of legislative power tilted mostly on the side of the concurrent jurisdiction and partly in favour of the Union subject and negligibly on the state side.
The object of these amendments was said either to bring uniformity in the state practice or remove inaction on the part of the states, for example, population control, weights and measures, the protection of wild animals, birds and forest etc.

An assessment of the achievement of the objects of these amendments gives a dismal picture to us with few exceptions. We may take one or two examples to fortify this statement. If by mere switching over from \(10+2+3\) to \(10+2+3\) system of education was the sole object of bringing education to the concurrent subject from the state list, then we must say that the object has been achieved. But certainly this was not the sole object. Education is a process which will develop under the local patronage but if it is imposed from above, the development process will, if not retarded, be slow. This is all the more true when two masters are in charge of the same subject. Actually the change over was effected to avoid education becoming fragmented both vertically and horizontally. The Education Minister, Mrs. Shiela Kaul also pointed out in the Lok Sabha that the present state of affairs in education required the concurrent jurisdiction.\(^\text{38}\) After eight years, \(^\text{38. The Hindustan Times, April 2, 1982. p. 8.}\)
can we say that we have achieved this objective or improved upon the then existing conditions. If the answer is 'no', than can we not say that the politician were fiddeling with education in the interest best known to them. After all, education has been called the technique of transmitting civilisation. In order that it may transmit civilisation it has to perform two major function; it must enlighten the understanding and it must enrich the character. The necessity of the amendment should have been assessed in these light and not on other consideration.

Even before 42nd amendment, the centre had a partial alibi in regard to the turdy progress we were making in Education as there has been central sector in education along with state sector. The education in central Universities cannot claim superiority over the education in the State Sector except some central technological institutions which have made some headway because of financial resource and segregation from substandard quality. Inspite of this fact, there is a clamour in some university campus to convert the same to central university. But such clamour is not for more plantiful academic

39. Palkhiwala N. "We the people". p. 19.
opportunities but for money. To prove the converse the transference of "population control and Social Welfare" from the State list to the concurrent list may be taken. So long as the subject was a state subject there was not much achievement in tackling the population explosion problem by the State Governments. But there is much headway in the recent past. The Minister of States for health Smt. Mohshina Kidwai informed the Rajya Sabha that a total of 27 million birth had been averted during 1971-81 thereby lowering the growth rate from 30 to 25 percent. 40

Regulation relating to weights and measures are still flouted, there is more destruction of animal, birds and forest than before.

The amendments to the distribution of legislative powers was not so much with an aim as to ease the tensions between the centre and the states as with the object to suit a political party in power instead of "we the people of India". The amendments instead of bringing harmony between the centre and the states, it autogamised the constituent units and watered down the sense of co-operation which is aimed by the federation.

After the last amendment, nearly eight years have passed and the party in power at the centre introduced change and rechange bringing in more tensions and conflicts in the centre state relationship resulting in certain corners separatist movement initiated by regionalism and regional elites.

The union parliament has a long arm to legislate on subjects enumerated on two long lists - Central and concurrent list. But the power of the parliament has been extended further by some other provisions of the constitution which have become a subject of criticism by the autonomist, as every one except the ruling party, (at the centre) agrees that the regional tensions now playing in India are result of over centralisation partly due to the constitutional provisions and mainly due to actual workings of the constitutional provisions.

While some constitutional provisions were so designed as to bring flexibility into the rigid principle of federalism which is a unique feature to be found only in our constitution, it also brought, to some extent, the unitary character to the constitution. The devices by

Ramesh Thappa in the challenge of Authentic Federalism.
which this flexible character, and consequently unitary character were brought in to our constitution are:

1. by introducing long concurrent list - list III of seventh schedule about which already discussed earlier.
2. by giving power to parliament to legislate upon state list -
   (a) During normal time i.e. U/A. 249, 252 and 253.
   (b) During emergency under Art. 250 and 251.
3. Reservation of state bill for the president's assent under Art. 200 and 254(2).
4. Supremacy of Law made by parliament over state laws in case of inconsistency-Art. 251(1) and 254.

Item 2, 3, 4 mentioned above require some more discussion.

F. PARLIAMENT'S POWER TO LEGISLATE UPON STATE SUBJECTS

Apart from having provided union and concurrent fields of legislation in which the parliament is supreme, 42

42. Except when bill passed by state legislature on current subject is found to be repugnant to central law on the same subject has been reserved for presidents' assent and such assent has been received (vide Art. 254(3).
the Indian Constitution also enacted that under the following circumstances the parliament can legislate upon the state subjects.

(i) Art 249(I) empowers parliament to legislate with respect to any matter in the state list in the national interest if the council of states empowers the parliament by a resolution passed by two third majority of the members present and voting.

(ii) Art 252 empowers parliament to legislate upon state subject for two or more states when legislatures of such states have requested the parliament by passing a resolution in the Assembly.

(iii) Under Art. 253 the parliament can legislate upon state subject for giving effect to international agreement.

The Rajamannar Committee in its report has observed that such provisions were wholly derogatory to the conception of federation and serious inroad to the state autonomy. Moreover, they felt that "National interest" is a criterion wide enough to include any matter which
concerns the country as a whole. Accordingly they recommended repeal of Art. 249. The memorandum submitted by the Government of West Bengal to the centre also recommended the abolition of the articles. But the composition of the Council of States that barring few nominated members, 12 in no, all the members are elected by the members of state legislative Assembly, and from this it can be said that it is very unlikely that they would pass a resolution detrimental to the states. But whether they give primacy to the states interest or interest of the party to which they belong is a serious question so long as there is uniparty rule in the centre and majority states. In India the party consideration is above the national interest. The report of the Rajamannar Committee did not approve blanket repeal of Art. 252 but found fault with the possibility of any parliamentary legislation for two or more states even with the consent of such states "if the resolution to that effect is passed by all the houses of legislatures of those states".

43. The Report on the CSR Committee, Government of Tamil Nadu. p. 47.
44. Art. 80(1)(6) and (4) and (5).
Committee recommended an amendment so as to enable a state legislature to amend if it thinks fit to repeal union laws. Prof. Jain Kagai is of the opinion that the recommendation if accepted, must frustrate the very purpose of having a uniform legislation on certain matters i.e., estate duty law in respect of agricultural land with prior consent and for the advantage of the states. If one state is allowed to amend such law, it might be rendered disadvantageous to other corresponding states.46

Although Art. 253 has affected the state autonomy, no one has raised finger against it as it is felt necessary that the parliament should have power to give effect to international agreement.

G. EMERGENCY AND FEDERAL PRINCIPLE

The unitary biasness is more openly injected into the distribution of legislative power by the constitution as the parliament is empowered to pass law during emergency on those subjects of State list under the following conditions.

46. Ibid. p. 266.
Under Art. 250 parliament has power to legislate with respect to any subject in the state list if a proclamation of emergency is in operation. And if state laws, if any, become repugnant to a law made by parliament in the said conditions, the state laws shall be inoperative to the extent of repugnancy.

Emergency provisions of our constitution is a unique feature which transform the federal character into unitary one during the period of emergency which in other federal constitutions is possible either only by taking recourse to amending procedure or judicial interpretation. Explaining the feature Dr. Ambedkar said:

"All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be

47. Art. 250.
both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as federal system. But in time of war it is so designed as to make it work as though it was a unitary system . . . . Such a power of converting itself into a unitary state no federation possesses...."50

The Indian nation tested the national emergency clamped by invoking the power U/A 352, by the President in November, 1962 and in June, 1975 on the advice of the Prime Minister, to perpetuate the rule of one party which was in power.51 During emergency, either national 52 or State 53 Financial 54 the parliament acquires power U/A 250 to legislate upon the State list.

52. Art. 352.
53. Art. 356.
54. Art. 360.
The abuse of emergency power granted by Art. 356 is more marked than other emergency provision and thereby denying the States' rights and that too more on political consideration than on other legitimate grounds. In most of the cases it has been imposed in the circumstances in which a stable ministry could not be formed and in some cases to further only the political ends of the ruling party. Till October 1983 emergency was declared U/A 356 not less than 39 times. In 1977 itself nine state Assemblies were dissolved by invoking power under Article 356 viz. Rajasthan U.P., M.P., Punjab, Bihar, H.P., Orissa, W. Bengal and Haryana when the Janata Government was in power in the centre. Ironically the Congress (I) who came back to power in 1979 Lok Sabha election, dissolved 9 state Assemblies in similar circumstances viz. U.P. Bihar, Rajasthan, M.P., Punjab, Orissa, Gujrat, Maharastra and Tamil Nadu, as if Congress (I) took revenge against the Janata Party for their unconstitutional action of 1977. But whatever may be the reason of political fighting, it is the state who had to suffer and people in general. This political game of invoking emergency provisions transpires

56. Ibid. 433-34.
at least one thing that the emergency provision and more particularly Art. 356 were abused and this is one of the causes of states dissatisfaction that the state legislature in India has been reduced to a municipal Board.

H. RESERVATION OF STATE'S BILL FOR PRESIDENT'S ASSERT.

Article 200 and 254(2) requires consideration as these two articles seriously entail state autonomy. The Governor has right to reserve bill passed by the State Legislature for the consideration of the president which in the opinion of the Governor would, if it became law, derogate from the powers of the High Court as to endanger the position which the High Court is by this constitution designed to fill. 58 While defending the provision Dr. B.R. Ambedkar said - "the High Courts are placed under the centre as well as the provinces. So far as the organisation and the territorial jurisdiction of the High Courts are concerned, they are undoubtedly under the centre and the provinces have no power either to alter the organisation of the High Court or the territorial jurisdiction of High

57. Art. 200.
58. Art. 200 proviso.
Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in list II the power rests under the new constitution with the states. It is perfectly possible for instance, for a state legislature to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be entertained by the High Court that would be one way whereby the state would in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the entries contained in list II for instance, debt cancellation or any such matter it would be open for the provinces to say that the decree made by any such court or Board shall be final and conclusive and the High Court should have no jurisdiction in that matter. With this object in view the provision was incorporated into the constitution.

And to remove the legal rigidity of division of legislative power between the Union and the States provision has been made in Art. 254(2) and this is applicable only in respect of concurrent subjects.

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60. Art. 254(2) provides where a law made by legislature of a State with reference to one of the matters contained in the concurrent list contains any provision repugnant to the provision of an earlier law made by parliament of an existing law with reference to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent prevail in that State.
However, parliament can abrogate such law by subsequent enactment.\textsuperscript{61} To avoid such a conflicting situation in the matter of concurrent jurisdiction similar provisions are to be found in the constitution of Australia,\textsuperscript{62} Constitution of U.S.A.\textsuperscript{63} and also in the constitution of U.S.S.R.\textsuperscript{64}

The purpose of Art. 254(2) is to ensure that keeping in view the local conditions, sometimes it may be necessary that a law passed by the State Legislature should have precedence over the law passed by the parliament on the same subject of the concurrent list. It certainly does not mean that each and every Bill passed by the State Legislature on matter in the concurrent list should be reserved for the consideration of the President.\textsuperscript{65}

\begin{itemize}
\item \textsuperscript{61} Proviso to Art. 254(2).
\item \textsuperscript{62} Sec. 109 of the Constitution.
\item \textsuperscript{63} Art. VI Clause(2).
\item \textsuperscript{64} Art. 19 of the Constitution.
\item \textsuperscript{65} J.R. Siwach - Paper entitled "Centre State Relations and Reservation of Bills for consideration of the President. p. 4-5. submitted to" Seminar on Centre State Relations held from 5-8 Jan. '84. Madras.
\end{itemize}
In case of unoccupied field in the concurrent list, the constitution provides self-regulating and automatic mechanism in Art. 254(1) in as much as that a State Law on a concurrent list shall be void to the extent of repugnancy i.e., it clashes with the union law which means such Bill need not be reserved for the President's assent.

Moreover, whenever the framers of the constitution wanted that the "unoccupied field" in the concurrent list should remain "unoccupied" unless the president has allowed the State to occupy it, the framers have specifically provided for that and Art. 288(2) proves this contention. 66

I. CRITICAL APPRAISAL

From the foregoing discussion it appears that very few states legislation in the concurrent subject could be reserved by the Governor 67 for the President's assent. 68

66. Ibid. Art. 288(2) provides that if state legislature passes a law which imposes a tax on water and electricity (a concurrent subject) stored or generated, it must be reserved for the consideration of the President.


68. Art. 284(2).
But the theoretical rule mentioned above has been surpassed in practice as more and more bills are reserved for president's assent. The President assented to 46 bills in 1957, 117 in 1959-60, 146 in 1961-62, 151 in 1963-64, 149 in 1964-65, 52 in 1967-68 under Article 31(3), 254(2) and 288(2). Again 54 bills in 1977, 128 in 1978, 146 in 1979 and 96 bill in 1980 were assented to by the President. Further, it is distressing to note that it appears that benefit of lacuna of not providing time limit as to when such bill reserved for President's assent should be returned to the State in Art. 254(2), has been reaped by the Union Government by delaying in giving assent to such bill for a long time. For example as many as seventeen bill passed by West Bengal Assembly in mid 1980, were not assented till August 1981, and four other West Bengal bill presented in 1980 were not assented to till September 1983. As many as six West Bengal Bills were waiting for the President's assent till January 1984. Their title and date on which they were sent to the Government of India are as follows:

69. S.N. Jain. The Indian Federal System in the Union States. p. 28.

70. The Tribune May 14, 1980. p. 1. quoted from J.R. Siwach. Ibid.

71. The Times of India, August 18, 1981. p-6.
The West Bengal Masdoor, Tindal, Loader, Godown men and other workers (Regulation of Employment and Welfare) Bill 1981 sent on December 4, 1981; the Industrial Dispute (West Bengal Amendment) Bill 1981; on October 30, 1981. The Land Acquisition (West Bengal Land Reforms Amendment Bill, 1981, on May 14, 1981, the West Bengal Land Reform Amendment bill 1981, on June 23, 1981. The West Bengal Motor Vehicles (Amendment) bill 1981, on April 4, 1981 and the West Bengal co-operative Societies Bill on May 19, 1983. The case of West Bengal is not an isolated one. It is equally true in respect of other States also. This shows that the central Government has usurped the state's legislative power in the concurrent field beyond the expectation of the framers of the constitution and thereby has created distrust in the minds of the States and strained Centre State Relations. Therefore, the power of the Governor to withhold assent, return it to the legislature or reserve it for the consideration of the president and exercise of the power by the President under Art. 200 and 201 are undemocratic and unreasonable and need to be eliminated except if it be for preservation of the powers of the High Court. It is

deplorable that a bill passed by many representatives of people can be set at naught by a single person. Or alternatively "Art. 201 should be amended to impose a time limit within which the president would be bound to signify his assent or refusal to accord assent to the bill sent to him by the Governor."73