CHAPTER I

THE UNION AND THE STATES

On January 26, 1950, India, that is Bharat, became a Sovereign Democratic Republic under the terms of the Constitution framed by the Indians themselves. After a temporary eclipse, India, which from the very dawn of human history has been in the vanguard of civilization, has reentered the world stage to resume her onward march along with other free nations of the world. This is, without doubt, an event of world-wide significance and deserves to be recorded in the annals of mankind in "letters of living light."

In the process of building up the new constitutional foundation upon which depends the life, progress and happiness of the nation, its architects had had to grapple with many complex initial problems and difficulties. On the eve of independence two problems stood out above all others, namely, the communal cleavages and the anachronistic princely order. If partition of India, as envisaged in the Mountbatten Plan of June 3, 1947, ¹ could be said to

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have solved the first problem, the second still awaited solution. On August 15, 1947, when the Indian Independence Act came into operation, there were within the frontiers of the new Dominion of India besides the nine Governors' Provinces which had been under democratic rule since 1937, no fewer than 550 Indian States under the autocratic rule of hereditary princes and at different stages of social, economic and educational development. The British Government refused to transfer its rights of paramountcy over the Indian States to the new successor Government of India. The Indian Independence Act categorically declared that "As from the appointed day (August 15, 1947)..... the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the Rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the Rulers thereof, and all powers, rights, authority and jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise." The Independence Act thus released the States from all their obligations to the Crown and conferred upon them the theoretical right to be independent. All that the Government of India inherited from the Paramount Power was the proviso to Section 7 of the Independence Act, which provided for the continuance, until denounced by either

2. Section 7 (1) b.
of the parties, of agreements between the Indian States and the Central and Provincial governments in regard to specified matters such as, Customs, Posts and Telegraphs etc.

The new relationship of the Indian States with the Dominion of India was left to be determined by future negotiation and adjustment. The territories of the Indian States had been scattered throughout the length and breadth of India and comprised roughly 48 per cent of the total area and 28 per cent of the total population of the Dominion of India. It was unwise and unpractical and even perilous to allow the people of these States to continue under the despotic rule of the princes and isolate them from the national upsurge and awakening which had brought India her cherished freedom. The problem of bringing the States into some kind of constitutional relationship with the Centre and thereby ensuring the organic unity of India was, therefore, a problem of crying importance and grave urgency and brooked no delay.

In the wake of the country's independence, the people of a few of these States who had built up in their territories democratic organisations over years, were able to wrest power from the hands of their rulers. But in most States the people lacked the necessary resources and training required to replace autocracy. Not only had the States to be emancipated from the morass of feudal rule but their

number had to be reduced considerably as most of them were small in area and lacked the resources to sustain the machinery of modern administration. These and other problems had to be solved satisfactorily before the States could be fitted into the constitutional structure of India. The task was immense and required 'all the patience of the bricklayer, the vision of the planner and the skill of the engineer.' Thanks to the late Sardar Patel, the 'Iron Man of India,' in whom inhered the qualities of patience, vision and skill in a remarkably high degree, the task was accomplished in a strikingly short period of two and a half-years and in a most admirable manner. It was indeed a miracle that the Sardar wrought.

The lines on which the solution was sought involved two main phases. The first was marked by the accession of the States to the Dominion of India, and the second involved a process of two-fold integration, namely, the consolidation of States into sizeable administrative units and their democratisation.

In a memorable statement on Indian States, the Sardar appealed to the Rulers to cooperate in the task of building a United India. He told the Rulers:

"...it is therefore better for us to make laws sitting together as friends than to make treaties as aliens."

1. White Paper, Para 86.
2. White Paper, Appendix V.
He also sounded a note of warning in the same breath when he said:

"I hope the Indian States will bear in mind that the alternative to cooperation in the general interest is anarchy and chaos which will overwhelm great and small in a common ruin if we are unable to act together in the minimum of common tasks."

To this appeal of the Sardar, the Rulers responded promptly and in a spirit of patriotism. By August 15, 1947, the Sardar could tell the country that all States contiguous to Indian territory had acceded except Hyderabad, Kashmir and Junagadh. By the end of 1949 even these states had joined the Dominion.

The integration of the States did not follow an uniform pattern in all cases. It took three forms: (1) A large number of states were merged into Governors' Provinces geographically contiguous to them. 216 States covering an area of 108,739 Sq. miles were merged in provinces. (2) 61 States covering an area of 63,704 Sq. miles with a population of 6,925 millions were constituted into centrally administered areas, and (3) 275 States covering an area of 215,450 Sq. miles with a population of 34.7 millions were consolidated into Unions of States.

Three States which were of considerable size were left untouched by the process of integration. These were Hyderabad, Jammu and Kashmir and Mysore. Their boundaries

1. White Paper, Para 94, also Para 147.
were also preserved in tact. Thus, as a result of the application of the various merger and integration schemes, 550 and odd units were, in less than two and a half-years reduced to 15 units of which 8 are now fullfledged States in Part B enjoying substantially the same constitutional status as States in Part A and the rest are centrally administered States in Part C of the First Schedule to the constitution.

The final phase of the process of integration was the democratisation within the States. On the eve of the transfer of power, the Rulers' absolutism was the dominant note of the polity of the States. In a democratic State like India there could be no place for autocracy of any shade, and a radical change-over from an autocratic set up to a democratic order could by no means be easy. "In many States, even the rudiments of administrative machinery did not exist. In a number of others political and administrative institutions were found to be only in an embryonic stage. The problem, therefore, is not merely one of replacing the super structure of the administrative systems in States; nor even of reconstructing in them the organs of State. A modern system of Government had to be built in the States and in many of them a start had to be made from the very beginning." However, the new Government of India succeeded in transferring power from the Rulers to the people. The States merged in the Provinces are now under the popular governments of the provinces and provision has been made for their representation in the Provincial Legislatures. In the Centrally

2. Ibid, Para 154.
administered areas, democratisation at present takes the form of the administration made responsible to the Central Legislature. After the coming General Elections, under the terms of the Government of Part C States Act, 1951, 6 centrally administered areas will have Legislative Assemblies with ministers responsible to them. In the others, except the tiny State of Bilaspur, it is proposed to set up a Council of Advisers to the Chief Commissioner. As regards the Unions of States, three - Saurashtra, Travancore-Cochin and Madhya Bharat - have popular governments functioning in them as also the States of Kashmir and Mysore. In the case of Hyderabad popular government will be set up as soon as the first legislature under the Constitution is summoned. Although the work of democratisation is well under way, a considerable lee way has still to be made up in the field of bringing the administration of States to the Provincial level.

These are great and significant changes and they have been brought about peacefully, without recourse to arms, save for a five day police action in Hyderabad, in the short period of two and a half years between the achievement of independence (August 15, 1947) and the Proclamation of the Republic (January 26, 1950). They have resulted not only in the eradication of all artificial barriers that separated the Indian States from the rest of India, but have also laid the foundation of a strong, united democratic India.

1. Gazette of India, 6th September, 1951.
India, under the Constitution, is a 'Union of States.'

It comprises, at present, 27 States and the Andaman and Nicobar islands. The units, which are all of them styled uniformly as States, are divided into three Categories. These are the States in Part A, the States in Part B and the States in Part C of the First Schedule to the Constitution. The States in Part A are nine in number and correspond to the Governors' Provinces under the Act. This group will comprise the States of Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal. The States of Punjab and West Bengal have been truncated by partition. The States in Part B, which are eight in number correspond to the old Princely States. In this Part are specified the States of Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Travancore-Cochin. Part C comprises ten States, some of which are the old Chief Commissioners' Provinces while the rest are some of the old Indian States. The States of Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh, are specified in this Part. There is provision in the Constitution for the establishment, formation and admission of new States.

Although the Constitution describes India as a

1. Art. 1.
2. First Schedule - Part D.
3. See Appendix 1.
5. This State was transferred from Part B and is now Centrally administered. Constitution (Amendment of the First and Fourth Schedules) Order, 1950.
6. Articles, 2-3.
Union, it is essentially a Composite State with a Central Government and Pro vincial units, with legislative, executive and judicial powers distributed between them on the model of a federal polity. Moreover, the Union is indestructible and no State has the right to secede from it.

The word "State" has been used, obviously, to the Union and also to the component parts of the Union. It must be remembered that the word 'State' is used "both in its natural meaning as well as the special meaning of a member-state of the Union." The wisdom of using the term State in reference to the units of the Indian Union irrespective of their size, population and constitutional status may be doubted. But it may serve one important purpose. It may, in the long run be conducive to these classes of States establishing the same kind of relationship with the Centre.

The Constitutional Set Up of the Union and the States:

In the United States of America as well as in Australia, the internal Constitutions of the Constituent States are left to be regulated by the people of those States themselves. The Constitutions of the Units are placed beyond the purview of the organic laws under which the general (federal) governments were formed. The Tenth Amendment to the Constitution of the United States safeguards the position of the Units in this respect.

The Tenth Amendment is as follows: "The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The Commonwealth of Australia Constitution Act, 1900 declares as follows: "The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State." The Constitution of Canada, on the other hand, provides not only a federal constitution for the Dominion of Canada but makes constitutional provision for the Government of the Provinces which joined the Federation. The Framers of the Constitution of India have followed the Canadian example in this respect. Under the Indian Constitutional set up, not only the governmental structure and powers of the Union Centre but the governmental structure and powers of the component States form part of one organic law.

The Government of the Union

(a) The Executive:

The Constitution provides for an elected President in whom will be vested the executive power of the Union. The

1. Section 106.
2. The British North America Act, 1867, Part V.
3. The Constitution of India, Part V.
4. Art. 53 (1).
President, however, is only a nominal head of the Executive. The real executive which is responsible for the conduct of the Union administration is the Council of Ministers, with the Prime Minister at its head. The chief function of the Council of Ministers will be "to aid and advise the President in the exercise of his functions." This may, perhaps, be regarded as the most important article in the whole constitution for it embodies one of the well established conventions relating to the Cabinet type of executive. Speaking on this provision Shri K. Santhanam observed:

"It is said here that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. That does not mean that normally the function of the Prime Minister is to aid and advise the President in the exercise of his functions. In fact, the position is altogether opposite or the reverse. It is the Prime Minister's business with the support of the Council of Ministers to rule the Country and the President, may be permitted now and then to aid and advise the Council of Ministers." The relationship that will exist between the President and his Council of Ministers will be analogous to the relationship the King in England bears to the British Cabinet. The Prime Minister is appointed by the President and the other ministers by the President on the advice of the Prime Minister. Further, the Council

1. Art. 74 (1).
3. Art. 75 (1).
of Ministers will hold office during the pleasure of the President. The Council of Ministers will be collectively responsible to the House of the People. A minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a minister. Thus the principle embodied in the British Cabinet form of government is fully applicable to the Union Council of Ministers.

The President will be indirectly elected by an electoral College consisting of (a) the elected members of both Houses of the Union Parliament; and (b) the elected members of the Legislative Assemblies of the States. The President will hold office for a term of five years and will be eligible for re-election to that office. He will be vested with the supreme command of the Defence Forces of the Union, the exercise of which shall be regulated by law. Provision is also made to remove the President from his office by an impeachment for violation of the Constitution in the special manner provided.

There will be a Vice-President of India, who will be the ex-officio Chairman of the Council of States. He is elected by the members of both Houses of Parliament assembled at a joint meeting, in accordance with the system of

1. Art. 75 (2).
2. Art. 75 (5).
3. Art. 75 (3).
4. Art. 54.
5. Art. 56 (1).
6. Art. 57.
7. Art. 53 (2).
8. Art. 56(1)b.
10. Art. 63.
11. Art. 64.
P.H. by means of the single transferable vote. He will hold office for a term of five years. He can be removed from this office by a resolution of the Council of States agreed to by the House of the People. Whenever there is any casual vacancy in the office of the President, the Vice-President will act as President, not as in the United States for the remainder of the term of the President, but only, until the election of a new President. The Vice-President also discharges the duties of the President during the temporary absence of the latter.

The Legislature:

The Union Legislature which will be known as Parliament will consist of the President and two Houses to be known respectively as the Council of States and the House of the People. This is in tune with the conventions of responsible government of the Cabinet type in which the separation of powers is organic and not personal. In the U.S. Constitution, on the other hand, the separation of powers is both organic and personal. The Constitution of U.S.A. declares that "All legislative powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and House of Representatives."

The Council of States shall consist of twelve members to be nominated by the President for their special

1. Art. 66(1)  5. Art. 65(2)
2. Art. 67  6. Art. 79
3. Art. 67(b)  7. Article 1, Section 1.
4. Art. 65(1)  8. Art. 80(1)
knowledge or practical experience in literature, science, art and social service, and not more than two hundred and thirty-eight representatives of the States to be allocated among the various States in accordance with provisions contained in the Fourth Schedule to the Constitution. The members to be returned by each State specified in Parts A and B of the First Schedule will be elected by the elected members of the Legislative Assembly of the State in accordance with the system of P.R. by means of the single transferable vote. The representatives of the States in Part C of the First Schedule shall be chosen in such manner as Parliament may by law prescribe. The Council of States is a permanent body not subject to dissolution, but nearly as possible one-third of its members shall retire every second year.

The House of the People will consist of not more than five hundred members to be directly elected by voters in the States, voting in Territorial constituencies organised on the basis of adult suffrage. The number of members allocated to each territorial constituency will be so determined as to ensure that there shall be not less than one member for every 750,000 of the population and not more than one for every 500,000 of the population. The normal term of the House, unless sooner dissolved, will be five years.

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1. Art. 80(3)
2. Art. 80(2) See also Appendix II.
3. Art. 80(4)
4. Art. 80(5)
5. Art. 83(1)
6. Art. 79.
7. Art. 1, Section 1.
8. Art. 80(1)
9. Art. 80(3)
It may be pointed out here that the Constitution provides for the establishment of an impartial body, known as the Election Commission, in which will be vested the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President of India, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connexion with the elections. The Election Commission will consist of a Chief Election Commissioner and such number of other Election Commissioners as the President may from time to time fix and appoint. The Chief Election Commissioner cannot be removed from office except in like manner and on the like grounds as a judge of the Supreme Court of India. The main object of these provisions is to ensure the fairness and impartiality of the elections.

The relationship between the two Houses of Parliament is broadly as follows: All bills, except Money bills, can originate in either House and must be passed by both Houses and be assented to by the President before they become laws. In the case of a conflict between the two Houses, provision has been made for the convocation of a joint session.

of both Houses and a bill that, with such amendments, if any, as are agreed to at a joint sitting, is passed by a majority of members of both Houses present and voting is deemed to have been passed by both Houses. A money bill can originate only in the House of the People and when it is passed by that House, it is to be transmitted to the Council of States, to be returned to the House of the People within fourteen days with any recommendations the Council may make. If the House of the People does not accept any of the recommendations of the Council of States, the money bill shall be deemed to have been passed by both Houses, in the form in which it was originally passed by the House of the People. Although the Annual Financial Statement showing the estimated receipts and expenditure of the Government of India for every financial year, is to be laid before Parliament, the voting on the demands for grants can be made only by the House of the People and the House has the power to a reduction of the grant demanded.

The Judiciary:

The Constitution provides for a Supreme Court of India, consisting of a Chief Justice of India, and until Parliament by law prescribes a larger number, of not more than seven other judges. Every judge of the Supreme Court is appointed by the President by warrant under his hand and seal and will hold office until he attains the age of 65 years.

1 Art. 108(4) 5 Art. 113(2)
2 Art. 109(2) 6 Art. 124(1)
3 Art. 109(4) 7 Art. 124(2)
4 Art. 112(1)
The person to be regarded as eligible for appointment as a Judge of the Supreme Court must possess certain prescribed qualifications. A judge of the Supreme Court shall not be removed from office except by an order of the President passed after an address by each House of Parliament supported by a majority of total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. The Constitution in its various provisions has secured the independence of the judges in every possible way.

The Constitution has conferred a very wide range of jurisdiction on the Supreme Court. Only the broad contours of its jurisdiction are sketched here. The Court will not only deal with purely constitutional matters but will also function as a Court of Appeal in Civil Cases from State High Courts in ordinary litigation. The Court will exercise an exclusive original jurisdiction in any dispute (a) between the Government of India and one or more States; or (b) between the Government of India and any State or States on one side and one or more other States on the other; or (c) two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. An appeal will lie to the Supreme Court from any judgment, decree or final order of a High Court.

1 Art. 124(3) 3. Art. 125 5. Art. 132(1)
2 Art 124(4) 4. Art. 131
whether in a Civil, Criminal, or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution; or, where a High Court has refused such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution, grant special leave to appeal from such judgment, decree or final order. An appeal will also lie to the Supreme Court from any judgment, decree or final order in a Civil proceeding of a High Court in the territory of India if the High Court certifies (a) that the amount or value of the subject-matter of the dispute in the Court of first instance and still in dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the lie amount or value; or (c) that the case is a fit one for appeal to the Supreme Court; and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law. The Supreme Court is also invested with appellate jurisdiction

1. Art. 132(1) 3. Art. 133
2. Art. 132(2)
in regard to Criminal matters. An appeal lies to the Supreme Court from any judgment, final order or sentence in a Criminal proceeding of a High Court, if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or (c) certifies that the case is a fit one for appeal to the Supreme Court. An advisory jurisdiction has also been conferred upon the Supreme Court. If, at any time, it appears to the President that a question of law or fact has arisen, or likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may report to the President its opinion thereon.

The jurisdiction is analogous to the jurisdiction conferred on the Supreme Court of Canada by Section 55 of the Supreme Court Act, Revised Statutes of Canada, 1927. Under this Act the Governor-General in Council can get the advisory opinion of the Supreme Court on important questions.

The right to move the Supreme Court for the enforcement of Fundamental Rights is guaranteed, and provision is made for Parliament by law providing for writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and

and certiorari, for any purposes other than the enforcement of Fundamental Rights. Parliament may by law confer further jurisdiction and powers on the Supreme Court with respect to any matter other than those dealt with specifically by the Constitution. The writs of the Supreme Court run throughout the territory of the Union. Its judgments and decrees are not merely declaratory in their nature but are enforceable throughout the territory of India. The law declared by the Supreme Court is binding on all Courts within the territory of India. Commenting on the wide range of jurisdiction of the Supreme Court a great authority observes: "The Supreme Court under the Indian Constitution has probably wider powers than the highest Court in any other known Federation."

The Government of the States

The component units of the Indian Federation will consist, as already pointed out, of three classes of States, namely, (1) Nine States (corresponding to the nine former British Indian Governors' Provinces) specified in Part A of the First Schedule; (2) eight units (formed out of the old Indian State territory) included in Part B and, (3) ten units (seven formed out of old Indian State territory and the three former British Indian Chief Commissioners' Provinces comprising the States in Part C. We may now proceed to outline briefly the salient features of the governmental machinery created for the States in each of these Parts.

1. Art. 139. 5. Shri Alladi Krishnaswami Aiyar, The
3. Art. 142(1)
4. Art. 141.
The States in Part A of the First Schedule

(i) The Executive:

Each of these States will have a Governor, appointed by the President by warrant under his hand and seal, as executive head. He will hold office, subject to the pleasure of the President, for a term of five years. In him will be vested the executive power of the State and will be exercised by him either directly or through officers subordinate to him. The Governor will have the assistance of a Council of Ministers, with a Chief Minister at the head, to aid and advise him in the performance of his functions, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. The Council of ministers will work as a team and will be collectively responsible to the Legislative Assembly of the State.

(ii) The Legislature:

Each State will have a Legislature which shall consist of the Governor and (a) in the States of Bihar, Bombay, Madras, Punjab, Uttar Pradesh, and West Bengal two houses and (b) in the other three States of Orissa, Assam and Madhya Pradesh, one House where there are two Houses of Legislature in a

* The provisions on the governmental machinery for the administration of these States are embodied in Part VI of the Constitution. Part VI deals with what used to be called the Governors' Provinces under the Act.

1. Art. 153 5. Art. 154(1)
2. Art. 155 6. Art. 163(1)
3. Art 156(1) 7. Art. 164(2)
4. Art. 156(3) 8. Art. 168(1)
State, one shall be known as the Legislative Council and the other as the Legislative Assembly and where there is only one House, it will be known as the Legislative Assembly.  

The members of the Legislative Assembly will be chosen from territorial constituencies by direct election. There is to be not more than one member for every 75,000 of the population, but the total number of members in the Legislative Assembly of a State shall in no case be more than five-hundred or less than sixty.  

The total number of members in the Legislative Council of a State shall not exceed one-fourth of the total number of members in the Legislative Assembly of that State, but in case it shall be less than forty. Until Parliament by law otherwise provides, of the total number of members of the Council one-third shall be elected by electorates consisting of members of municipalities, district boards, one-twelfth by electorates consisting of the graduates of Universities, one-twelfth by electorates composed of teachers of at least three years' standing and one-third shall be elected by members of the Legislative Assembly. The rest shall be nominated by the Governor. The nominated members shall be persons having special knowledge or practical experience in respect of such matters as literature, science, art, cooperative movement and social service.

1 Art. 168(2)  2. Art. 170.  3. Art. 171.
The normal term of the Legislative Assembly, unless sooner dissolved, is five years, while the Legislative Council, like the Council of States at the Union Centre, will be a permanent body one-third of whose members retire every second year.

Where there are two Houses the Legislative Assembly will retain the whip hand, even in respect of ordinary legislation, the Legislative Council having power only to delay the enactment of legislation for a limited period. In the case of money Bills and voting upon demand for grants the position of the Legislative Assembly vis-à-vis the Legislative Council is similar to the relationship between the House of the People and the Council of States.

(iii) The Judiciary:

Each State shall have a High Court, which shall consist of a Chief Justice and such other judges as the President may from time to time appoint. Every judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court. A judge of the High Court will hold office until he attains the age of sixty years, and can be removed from office in exactly the same manner in which a judge of the Supreme Court can be removed.

1 Art. 172 5. Art. 217(1)
2 Art. 197. 6. Art. 217(1)
3 Art. 214(1) 7. Art. 217(1)b.
4 Art. 216.
Each High Court will have superintendence over all Courts and tribunals throughout the territories in which its jurisdiction is operative. Every High Court, like the Supreme Court, will have power in relation to its territory to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari for the enforcement of the Fundamental Rights enumerated in Part III of the Constitution.

The States in Part B of the First Schedule*

The Constitution stipulates that the provisions of Part VI shall apply to the States in Part B as they apply to the States in Part A, subject to certain modifications and omissions detailed in it. The constitutional structure of the governments of States in Part A and Part B is broadly identical in the Constitution. In the case of a State in Part B, a Rajpramukh takes the place of a Governor, but the powers exercised by these two functionaries in their respective territories are practically identical. In the State of Mysore, the Legislature will consist of two Houses and in the other States one House.

It must be here noted that among the States in Part B, Jammu and Kashmir and Hyderabad still occupy an exceptional position from a strictly legal and technical point of view.

1 Art. 227(1)
2 Art. 226(1)
3 This part describes the constitutional machinery of Part A States.
The constitutional position of the State of Jammu and Kashmir is governed by the provisions of Article 370. "The effect of this provision is that the State of Jammu and Kashmir, continues to be a part of India. It is a unit of the Indian Union and the Union Parliament will have jurisdiction to make laws for this State on matters specified either in the instrument of Accession or by later additions with the concurrence of the Government of the State." This special provision in respect of Jammu and Kashmir was felt necessary in view of the special problems facing that State and also in view of the fact that the Government of India have assured its people that they would themselves finally determine their political future. An order has been issued under Article 370 which specifies (1) the matters in respect of which the Parliament may make laws for the Jammu and Kashmir and (2) the provisions, other than Article 1 and Article 370, which shall apply to that State. A Constituent Assembly has been convened and it will go into these matters in detail and make recommendations to the President thereon.

As regards the State of Hyderabad, the Nizam issued a proclamation accepting the Constitution framed by the Constituent Assembly of India as the Constitution for the State of Hyderabad. "The Proclamation makes it clear that the decision taken by the Nizam is subject to the confirmation of the people, whose will as expressed through the Constituent Assembly of the State, must finally determine the nature of the State's rela-

tionship with the Centre as also the Constitution of the State itself.

In one very important respect the States in Part B differ from the States in Part A, in as much as the former are subject, during a period of ten years from the commencement of the Constitution, or during such longer or shorter period Parliament may by law provide in respect of any State, shall be under the general control of and comply with such particular directions, as may from time to time, be given by the President. This may be said to be the new paramountcy created by the Constitution.

The States in Part C of the First Schedule

The States in Part C will be administered by the President under Part VIII of the Constitution, acting to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State. The Constitution makes provision for Parliament by law to create or continue, for any State administered through a Chief Commissioner or a Lieutenant-Governor, a body whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State; or a Council of Advisers or Ministers; or both with such Constitution, powers and functions, in each case, as may be specified in the Law. Parliament is also empowered to constitute a High Court for any State or declare any Court in any such State to be a High Court for all or any of the purposes of the Constitution.

Under the terms of the Government of Part C States Act, 1951, the States of Himachal Pradesh, Vindhya Pradesh, Coorg, Ajmer, Delhi and Bhopal will have Legislative Assemblies with ministers responsible to them. The border-States of Tripura, Manipur and Kutch will have only a Council of Advisers each. The tiny State of Bilaspur is left out of the purview of the Act.

The Council of Ministers will aid and advise the Chief Commissioner in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of the State has power to make law except in so far as he is required to act in any judicial or quasi-judicial capacity. In case of difference of opinion between the Chief Commissioner and his ministers on any matter, the decision of the President thereon shall be final. In the State of Delhi every decision taken by the Council of Ministers shall be subject to the concurrence of the Chief Commissioner. The Chief Commissioner, whenever he is present, shall also preside over the meetings of the Council of Ministers. The Chief Minister is appointed by the President and the other ministers are appointed by the President on the advice of the Chief Minister. The ministers will hold office during the pleasure of the President and be collectively responsible to the Legislative Assembly of the State. The Legislative Assembly shall be composed of elected members and shall have its Speaker and Deputy Speaker. The Assembly can make laws with respect to any matter specified in the State and

1. Section, 36. 2. Section, 37. 3. Section, 10.
Concurrent Lists in the Seventh Schedule to the constitution. Parliament, however, will have concurrent jurisdiction. As Delhi occupies a peculiar position as the Capital of India certain subjects have been excluded from the purview of its Legislative Assembly. These relate to (a) Public Order: (b) police including railway police; (c) the constitution and powers of municipal corporations and other local authorities, of improvement trusts and of water supply, drainage, electricity, transport and other public utility authorities in Delhi or in New Delhi; and (d) land and buildings vested in or in possession of the Union. The requirement of prior sanction of the Chief Commissioner will be limited to Money Bills and Bills affecting the Court of the Judicial Commissioner and the State Public Service Commission.

The Chief Commissioner and the Council of ministers will be under the general control of, and comply with such particular directions as may be given by the President. Provision in case of failure of constitutional machinery in the State has also been made. The Government of Part C States Act thus liberalises the constitutional set up of some of the Part C States by conferring on them a measure of self-government.

1 Section, 21.
2. " 23.
3. " 40
4. " 41.
### Table 1. Area and Population of the Union and the States

<table>
<thead>
<tr>
<th>States and States Union</th>
<th>Area (in square miles)</th>
<th>Estimated Population on March 1, 1950 (in million)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>THE UNION OF INDIA</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assam</td>
<td>1,220,099</td>
<td>339.36</td>
</tr>
<tr>
<td>Part A States</td>
<td>54,984</td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>70,368</td>
<td>8.51</td>
</tr>
<tr>
<td>Bombay</td>
<td>1,08,142</td>
<td>39.42</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>1,31,686</td>
<td>32.68</td>
</tr>
<tr>
<td>Madras</td>
<td>1,21,768</td>
<td>20.92</td>
</tr>
<tr>
<td>Orissa</td>
<td>59,018</td>
<td>54.29</td>
</tr>
<tr>
<td>Punjab</td>
<td>37,421</td>
<td>14.41</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>1,12,523</td>
<td>12.61</td>
</tr>
<tr>
<td>West Bengal</td>
<td>29,370</td>
<td>61.62</td>
</tr>
<tr>
<td><strong>Part B States</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hyderabad</td>
<td>82,698</td>
<td>17.69</td>
</tr>
<tr>
<td>Jammu and Kashmir</td>
<td>84,714</td>
<td>4.37</td>
</tr>
<tr>
<td>Madhya Bharat</td>
<td>46,710</td>
<td>7.87</td>
</tr>
<tr>
<td>Mysore</td>
<td>23,458</td>
<td>8.06</td>
</tr>
<tr>
<td>Patiala and East Punjab States Union</td>
<td>10,099</td>
<td>3.32</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>1,28,424</td>
<td>14.69</td>
</tr>
<tr>
<td>Saurashtra</td>
<td>21,000</td>
<td>3.96</td>
</tr>
<tr>
<td>Travancore-Cochin</td>
<td>9,155</td>
<td>8.58</td>
</tr>
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</table>
Table 1 - continued:

<table>
<thead>
<tr>
<th>State</th>
<th>Revenue</th>
<th>Expenditure</th>
<th>Surplus/Deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ajmer</td>
<td>2,400</td>
<td></td>
<td>0.73</td>
</tr>
<tr>
<td>Bhopal</td>
<td>6,921</td>
<td></td>
<td>0.85</td>
</tr>
<tr>
<td>Coorg</td>
<td>1,593</td>
<td></td>
<td>0.71</td>
</tr>
<tr>
<td>Delhi</td>
<td>574</td>
<td></td>
<td>1.51</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>10,000</td>
<td></td>
<td>1.08</td>
</tr>
<tr>
<td>Kutch</td>
<td>8,461</td>
<td></td>
<td>0.55</td>
</tr>
<tr>
<td>Manipur</td>
<td>8,620</td>
<td></td>
<td>0.54</td>
</tr>
<tr>
<td>Tripura</td>
<td>4,049</td>
<td></td>
<td>0.58</td>
</tr>
<tr>
<td>Vindhya Pradesh</td>
<td>24,600</td>
<td></td>
<td>3.88</td>
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</tbody>
</table>

Table 2. Budgetary Position of the Union and the States

Budget for 1951-52 (In lakhs of Rupees)

<table>
<thead>
<tr>
<th>State</th>
<th>Revenue</th>
<th>Expenditure</th>
<th>Surplus/Deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE UNION OF INDIA</td>
<td>401,04</td>
<td>375,43</td>
<td>25,61</td>
</tr>
<tr>
<td>Assam</td>
<td>9,62</td>
<td>10,60</td>
<td>-98</td>
</tr>
<tr>
<td>Bihar</td>
<td>35,97</td>
<td>31,13</td>
<td>484</td>
</tr>
<tr>
<td>Bombay</td>
<td>60,64</td>
<td>60,60</td>
<td>4</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>20,45</td>
<td>20,31</td>
<td>14</td>
</tr>
<tr>
<td>Madras</td>
<td>59,63</td>
<td>60,30</td>
<td>-07</td>
</tr>
<tr>
<td>Orissa</td>
<td>10,56</td>
<td>11,51</td>
<td>-05</td>
</tr>
<tr>
<td>Punjab</td>
<td>16,63</td>
<td>16,84</td>
<td>-04</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>61,26</td>
<td>61,51</td>
<td>-05</td>
</tr>
<tr>
<td>West Bengal</td>
<td>34,05</td>
<td>38,81</td>
<td>-476</td>
</tr>
</tbody>
</table>

1 Reserve Bank of India Bulletin, March 1951.
2 Ibid, April, 1951.
<table>
<thead>
<tr>
<th>State</th>
<th>1</th>
<th>43</th>
<th>114</th>
<th>-71</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ajmer</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bhopal</td>
<td>53</td>
<td>75</td>
<td>156</td>
<td>-81</td>
</tr>
<tr>
<td>Delhi</td>
<td>253</td>
<td>414</td>
<td></td>
<td>-161</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>152</td>
<td>193</td>
<td></td>
<td>-41</td>
</tr>
<tr>
<td>Kutch</td>
<td>30</td>
<td>157</td>
<td></td>
<td>-127</td>
</tr>
<tr>
<td>Manipur</td>
<td>37</td>
<td>48</td>
<td></td>
<td>-11</td>
</tr>
<tr>
<td>Tripura</td>
<td>36</td>
<td>62</td>
<td></td>
<td>-26</td>
</tr>
<tr>
<td>Vindhy Pradesh</td>
<td>228</td>
<td>218</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Bilaspur</td>
<td>7</td>
<td>14</td>
<td></td>
<td>-7</td>
</tr>
</tbody>
</table>

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1 The Eastern Economist, August 31, 1961.
The States as Federal Units

It is a matter of political experience that similarity of political institutions in and equality of the units contribute in a considerable measure to the success of the federal form of Union. It is desirable to examine from this point of view the position of the States in the Union of India.

Although the units of the Union of India are all of them styled States, they are divided into three categories, viz., the States in Part A, the States in Part B and the States in Part C. The very fact that the States are placed in distinct groups points to the conclusion that there are obvious differences as between States in one Part and States in another. The States in one part differ from the States in the other two parts not only in the structure of their governments but also in the relationship that exists between them and the Union Centre. Some of the differences are only superficial but some are vital in their character.

Before proceeding to point out the differences between the States in Part A and the States in Part B, it must be borne in mind that among the States mentioned in Part B, the States of Hyderabad and Jammu and Kashmir occupy an exceptional position from a legal point of view. Although both are members of the Union of India, their status and relationship with the Union Centre have to be determined by a special procedure.
The governmental structure of the States in Part A and the States in Part B is broadly identical. There are, however, a few points of difference. While each State mentioned in Part A will have as its executive head a Governor appointed by the President for five years, each State specified in Part B will have a person called the Rajapramukh, recognised as such, by the President to perform the functions of a Governor in relation to it. Those who are to be appointed as Governors will have to satisfy certain conditions regarding age, citizenship etc. The Rajapramukhs, on the other hand, are members of the old princely order. In recognising any one as Rajapramukh the President is expected to respect the general law of inheritance. Further, the Privy purse of the Rajapramukhs constitute a charge on the revenues of the Union Government while the salaries of the Governors are a charge on the revenues of the States concerned. These differences are not material and they do not affect the powers they (Governors and Rajapramukhs) will exercise. The position of the Rajapramukhs is completely assimilated to the position of the Governor. Both functionaries will not only derive their powers wholly from the provisions of the Constitution but will also exercise them subject to the conditions prescribed by it.

During a period of transition the Rajapramukhs in certain States are empowered to determine the salaries of the speakers, deputy speakers and members of the Legislative Assemblies in their States, and also their rules of procedure.

* Art. 238 Cl.(11)
In the determination of the salaries of the judges of High Courts in Part B States, which are not specified in the Constitution, the President will have to act in consultation with the respective Rajapramukhs. During the transition period, Part B States will enjoy certain concessions and privileges in regard to financial matters which are not enjoyed by the States in Part A. This is because of the historical convention of the States in Part B. As a result of the federal financial integration, the finances of some of the States were dislocated. In order to enable these States to adjust their financial resources to their financial needs, the Constitution, during a transition period of 10 years, accords special treatment to Part B States in matters of finance. There is provision for extending special subsidies and grants-in-aid to the needy States from the Union Centre. Moreover, as trade and Commerce is declared to be free throughout the territories of the Union, the States which depended on internal customs are now deprived of it. As a sudden abolition of Customs would upset their finances, the Constitution empowers such States to continue to levy them during the period of transition. These concessions would disappear at the expiration of the 10 year-transition period and with them the disparity that now subsists in these respects between Part A and Part B States.

In their relationships with the Union Centre, the States in Part B are unlike the States in Part A. They stand on

* Art. 238 (13) 2 Art. 301
1 Art. 278. 3 Art. 306
a different footing. Their relationship with the Centre is regulated by Article 371 which is as follows: "Notwithstanding anything in this Constitution, during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State specified in Part B of the First Schedule shall be under the general control of and comply with such particular directions, if any, as may from time to time be given by the President." Thus while the States in Part A are independent of the superintendence and control exercised by the Union Centre, the States in Part B are subject to it during the period of transition. The power of superintendence and control embraces the entire field of the administration of the State and is as pervasive and comprehensive as the paramountcy of the Crown over the old Indian States. While the transition period in respect of Articles 278 and 306 is limited to ten years, in the case of Article 371 it may continue beyond that period. This observation becomes convincing when it is realized that Article 371 was introduced having regard to the backwardness of some Unions of States in respect of administration. The responsibility of raising the administration in these Unions to the level of that in Part A States, rests squarely upon the Centre. This task, it is feared, in not going to be accomplished in such a brief period as ten years. It may extend well over three or four decades. This Article creates a real disparity between Part A States and Part B States and the disparity will persist as long as the period of transition lasts. It also places them in a
position of inferiority in relation to the Centre to that occupied by those in Part A. Under the Act, the Indian States, it was complained, occupied a position of privilege and superiority as compared with that of the Provinces. Their position under the Constitution, at any rate during the period of transition, has been completely reversed. Thus while the relation of the Union Centre with Part A States will be largely federal, it will be somewhat unitary with Part B States. Of course, these differences will disappear with the expiry of the period of transition. But the point here underlined is that so long as there is what is called a period of transition, there will exist disparities between the States in Part A and the States in Part B.

We now come to the States in Part C. The States included in this Part vary greatly in the constitutional structure of their government. It is possible to place them in three or four groups. Firstly, there is the tiny state of Bilaspur which is going to be affected substantially by the Bakhra Dam Project. It is directly administered by the President through a Chief Commissioner. Secondly, there are the three border-states - Tripura, Manipur and Kutch - each under a Chief Commissioner responsible to the President. There will be a Council of Advisers for each of these States. The States in these two classes enjoy no autonomy. They are under the complete control of the Union Centre. It is, therefore, a misnomer to call these States as such. Thirdly, the remaining six States will each have a Legislature fully elected with a Council of
Ministers responsible to it. The Legislatures of these States are competent to legislate on matters specified in the State and Concurrent Lists. But the overriding legislative power of Parliament in regard to these subjects is permitted. The State subjects will become Concurrents Subjects. In regard to executive administration in these States, the person responsible is the President i.e., the Government at the Centre. The Chief Commissioner is the intermediary through whom he acts and the powers of the Chief Commissioner are more positive than those of the Governor or the Rajpramukh. In regard to administration there would be greater control from the Centre than what is allowed in the case of Part B States. The supremacy of the Centre over these States is established fully. The Union Parliament can legislate on any matter for these States. The executive authority of the President over them is extensive. The Central Control and direction is pervasive as well as permanent. The Self-government conferred on these Units is very limited and the relation of the Centre with these States is very much akin to that which subsists between a Central Government and local Units. The States in Part C are treated as perpetual wards of Central Government. Finally, the State of Delhi in a class by itself. It is the Capital of the Union of India. The Union Government cannot but exercise special powers in relation to Delhi.

Thus the States in Part C differ radically from those in Part A and Part B.

It was said of the Act that it envisaged "a Federation composed of disparate constituent units in which the powers and authority of the Central Government will differ as between one
Constituent Unit and another." This criticism is relevant even to the Federation created by the Constitution. The Constituent units of the Union of India are disparate units. They are disparate not only in their governmental structure and in their relationship with the Union Centre but also in their area, population and budgetary position. While the States in Part A and Part B can be regarded as viable administrative units with the exception of Vindhyaprapadesh and perhaps of Himachal Pradesh, too, the other States in Part C are unfit to be regarded as units in a Federation. Of course, exception must be taken to the position of Delhi. The States in Part C are too tiny to be separate political entities with all the paraphernalia of self-government. These States, in the interests of the Union and in the interests of their people must be eventually merged in the bigger States geographically contiguous to them. It is only when the disparities between Part A and Part B States are removed and the Status of Part C States raised to that of Part A States that complete equality may be said to prevail among the units of the Indian Union. Until this is accomplished, it cannot be gainsaid that the Union of India is a Union of disparate Units.

This chapter furnishes the essential background to the study of the relation between the Union and the States (the States in Part A and the States in Part B) in the sphere of Legislation, Administration and Finance.

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2. Tables 1 and 2.