The problem of apportioning subject matters of legislative power between the Centre and the Units in a federation is always a vexed problem. Two methods of distribution are generally favoured. One, the American method, is to assign specific matters to the federal centre, leaving the residue to the units; the other, with some important modifications, is the Canadian system, which is to assign specific matters to the units, leaving the residue to the Union.

It would be of importance to the study of the scheme of distribution under our constitution if a detailed analysis of the American and the Canadian plans is made here.

The Constitution of the United States makes the distribution of legislative powers by four classes of provisions: (1) The powers of the Union are enumerated. These include the power to lay and collect taxes, duties, imposts, excises, to pay the debts and provide for the defence and general welfare of the United States; to borrow money on the credit of the United States; to regulate Commerce with foreign nations and among the several states; to establish an uniform rule of naturalisation and uniform laws on the subject of bankruptcies

throughout the United States; to coin money, regulate the value thereof and of foreign coin, and fix the standard of weight and measures; to establish post offices and post roads; to constitute tribunals inferior to the Supreme Court; to declare war; to raise and support armies; to provide and maintain a navy; to regulate land and naval forces; and to make all laws which shall be necessary for carrying into execution the foregoing powers and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof.

(2) The Union is prohibited from doing certain things. The Congress cannot levy any tax or duty on articles exported from any State, nor shall any preference be given by any regulation of Commerce or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another. It cannot discriminate between States in the matter of levying duties, imposts and excises.

(3) The States are prohibited from doing certain things. Although all powers not expressly given to the Union are reserved to the States, the constitution has at the same time, imposed certain limitations upon the exercise of these reserved powers so that their exercise may not interfere with the exercise of the powers vested in the National Government. The limitations are: (1) 'No State shall enter into any treaty, 

alliance or confederation.'  (ii) 'No State shall, without the consent of the Congress, lay any imposts or duties on imports and exports, except what may be absolutely necessary for executing its inspection laws.'  (iii) No State shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts.

(4) The residue i.e., powers not delegated to the Union or prohibited to the States belong to the States or to the People. This is made clear in the words of the 10th Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, or reserved to the States respectively, or to the people."

It is clear from this analysis of the plan of distribution of powers in the United States that the Congress is given legislative powers as to specified matters only including 'all laws which shall be necessary and proper for carrying into execution," the powers vested by the constitution in Congress or the Executive and that the powers of the State Legislatures are residuary. The State Legislatures are not given any exclusive powers as to any specified matters, but they retain exclusive power wherever the power of the Congress cannot reach. The principle underlying the scheme of distribution in the U.S.A., as observed by Prof. Willoughby, is that the Powers granted to the Federal Government are specified, expressly or by implication

and that the remainder of the possible governmental 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.' As to the powers of the National Government, in a celebrated judgment of the Supreme Court, the Chief Justice Marshall said: "The genius and character of the whole government seems to be that its action is to be applied to all external concerns of the nations, and to those internal concerns which affect the States generally but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the (national) Government."

The Canadian scheme of distribution is fraught with the utmost Complexity. The general principle here is of course the same as in the U.S.A., namely that matters of common Canadian concern are assigned to Dominion Parliament while matters of local concern are assigned to the Provincial Legislatures. A brilliant analysis of the Canadian plan is given by Sir Robert Garran. His analysis is as follows:

"The leading principles are: (1) that the subject matters of Provincial legislation are specific, those of the Dominion Parliament are partly specific and partly residuary. (2) That the powers both of Dominion and Provinces are mutually exclusive.

"Both these principles, however, require to be stated with very important qualifications. In the first place, the Constitution attempts to enumerate specifically some of the powers of the Dominion Parliament. We thus have two sets of enumerated powers, mutually exclusive, and yet these two fields are found in practice to overlap! The result has been a series of ingenious attempts, by judicial decision, to reconcile the two, with results which may be shortly stated as follows:—where there is overlapping of enumerated powers, the field is "concurrent," and where in this concurrent field Dominion and Provincial legislation clash, the provincial legislation to that extent gives way. Thus the specific powers of the Provinces are in a sense residuary. Dominion laws which are "ancillary" to either the residuary or the specific powers of the Dominion Parliament are valid even though they incidentally encroach on the specific powers of the Provinces.

The Mode of distribution

Dominion Legislative Powers:

(1) General (residuary) power given by Section 91- to make laws for the peace etc. of Canada in relation to all matters not enumerated in section 92 as exclusive powers of the Provinces. This power can only be exercised for matters national in character, and not comprised in the enumerated powers of the Provinces.

(2) Matters enumerated in section 91. These are not deemed to come within any of the 16 classes enumerated in section 92.
Matters "ancillary" to residuary or enumerated powers.

**Provincial Legislative Powers**

These are matters enumerated in section 92, but exclusive of matters enumerated in section 91. The Dominion has two kinds of legislative power—residuary and specific. The Provinces have one kind of legislative power, which is specific; but is at the same time residuary in the sense that it only covers so much of the enumerated matters in section 92, as are not included in the enumerated matters in section 91.

**Concurrent Powers**

Though there are no subject matters of express concurrent power (with one exception relating to agriculture) the existence of what is really a Concurrent field has been established by judicial decision. Though the enumerated powers of the Dominion and the Provinces are expressed as exclusive, they overlap.

Where there is overlapping of enumerated powers of the Dominion and the Provinces respectively, neither legislation will be ultra vires if the field is clear; if on this 'concurrent' field the two legislations meet, Dominion legislation prevails."

Thus in Canada, the British North America Act, 1867, gave specific legislative powers to the constituent Provinces and the residuary powers to the Dominion. Canada thus reversed the plan adopted in the U.S.A. which assigned specific powers to
the Congress and the residuary powers to the States.

The Commonwealth Parliament of Australia has, like the Congress of the United States, only 'enumerated legislative powers.' It has no general power to make laws for the 'the Peace, Order and good government of the people' such as the Canadian Parliament possesses. The enumeration is not double. Only the powers of the Commonwealth Parliament are specifically enumerated.

The Commonwealth Parliament exercises both exclusive and concurrent powers. There is, however, no independent list setting forth the concurrent powers. The exclusive powers are: (1) the seat of the Commonwealth; (2) all places acquired by Commonwealth for public purposes; (3) matters relating to federal public service; (4) customs, excise and bounties; (5) surrendered territory; (6) naval and military defence and forces; and (7) Coinage.

The legislative powers of the States are residual. The State Legislatures have power to legislate on any subject not exclusively assigned to the Commonwealth, but in case of inconsistency the Commonwealth law prevails. Section 51 of the Australian Constitution specified 39 subjects over which Parliament may legislate. Some of these by construction or implication have become exclusive and others concurrent, by reason of the operation of section 107 and section 109. Section 107 reads as follows: "Every power of the Parliament of a Colony which has become or becomes a State, shall unless it is by this constitution exclusively vested in the Parliament of the Commonwealth, or withdrawn from the Parliament of the States, continue

1 Sec. 52. 3. Sec. 111. 5. Sec. 115. 2 Sec. 90. 4. Sec. 114 6. Sec. 109.
as at the commencement of the Commonwealth, or at the admission
or establishment of the State as the case may be."

The Jurisdiction of the State legislation over the
entire concurrent field is justified by the theory of 'unoccupied
field.' If the Commonwealth Parliament has actually entered
and passed legislation on any of the concurrent subjects, the
Commonwealth law prevails and the State legislature will lose
its jurisdiction. But State legislation will be valid to the
extent it is not repugnant to the law of the Commonwealth. If
the Commonwealth law is repealed the State law would again be­
come operative. In the language of section 109, "when a law
of a State is inconsistent with a law of the Commonwealth, the
latter shall prevail, and the former shall, to the extent of
the inconsistency be void." The subjects mentioned in Section
51 are concurrent subject to the prevalence of Commonwealth le­
gislation in case of inconsistency. The concurrent sphere in
Australia is indeed very large.

We may also examine the plan of distribution of
powers in the Government of India Act of 1935. As will be
shown later, the scheme of distribution under the constitution
is closely modelled on the lines of the plan in the Act.

The Act envisages a federal form of government of
India and provides for a Statutory division of legislative powers
between the Centre and the Provinces. It enumerates in two
Lists (List I and List II of the Seventh Schedule to the Act)
the subjects in relation to which the Federal Centre and the Provinces respectively will have an exclusive legislative jurisdiction. In a third list, it enumerates the subjects over which both the Federal and Provincial Legislatures will have concurrent legislative powers.

Section 100 and the Seventh Schedule allocate by enumeration almost completely all the functions of legislation including taxation, to the Federal and Provincial Legislatures. This is an unique characteristic of the plan embodied in the Act.

Subjects in the Concurrent List are essentially provincial in character. But the intention of providing for this concurrent jurisdiction is to secure in respect of these subjects, the greatest measure of uniformity that may be found practicable but at the same time to enable provincial Legislatures to make laws to meet local conditions. The powers of the Federal Legislature are unrestricted in the concurrent field. The Act does not prescribe the relations between the Federal Centre and the Provinces in the concurrent sphere by means of rigid legal sanctions and prohibitions. There is the usual law of inconstancy according to which when a provincial law conflicts with a federal law, the former is void to the extent of the repugnancy.

Although the Lists are exhaustive it is possible that some subjects of legislation may come into the field in the future. So all matters not covered by enumeration in the Lists are left to be allocated by the Governor-General, acting
in his discretion, either to the Centre or to the Provinces, as he may think fit. In other words, the residue is left neither with the Units as in the U.S.A. nor with the Centre as in Canada but is left with the Governor-General.

**Distribution Under the Constitution**

In the task of framing the Constitution, the Constituent Assembly proceeded upon certain basic principles. It was felt that "to frame a constitution on the basis of a unitary State would be a retrograde step both politically and administratively;" that "the soundest framework of our constitution is a federation with a strong Centre;" and that "residuary powers should remain with the Centre."  

As a federal structure was decided upon, the legislative power had necessarily to be distributed between the Union and the States. In this important and difficult task, although the Framers of our Constitution had before them the schemes furnished by the American, the Canadian and the Australian constitutions they felt that the most satisfactory arrangement was to draw up three exhaustive lists of legislative subjects, subjects on the lines followed in the Government of India Act of 1935, viz., the Federal, the Provincial and the Concurrent. Explaining the reason why the Act was followed in this respect,

   Report of the Union Constitution Committee, Part V.
Shri B.L. Mitter, a member of the Union Powers Committee, said that "the Committee went into the matter of distribution of powers on a definite principle. It is this. Matters of national concern should be vested in the Centre and matters of Provincial concern should be vested in the Provinces. We had always this fundamental principle in mind when we made the lists. We found that the Act of 1935 was a good guide because in making the list in 1935 Act, the same principle was kept in view."
Moreover, the arrangement embodied in the Act had become familiar to Indian Politicians and lawyers.

All conceivable subjects of legislative power including taxation have been enumerated exhaustively in three Lists viz., the Union List, the State List and the Concurrent List in the Seventh Schedule to the Constitution. The Union Parliament has exclusive powers to make laws with respect to any matter specified in the Union List. The Legislature of any State in Part A or Part B has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in the State List. Both Parliament and the Legislature of any State in Part A or Part B have power to make laws with respect to any of the matters mentioned in the Concurrent List.

The Union List includes subjects of national concern and interest with respect to which uniformity of legislative and executive action is absolutely necessary. It is the longest

3. See Appendix.
of the three lists and comprises 97 subjects. Among others, the more important items included in this List are: defence; foreign affairs; Citizenship including naturalization and aliens; railways, aircraft and airnavigation; posts and telegraphs; telephones, wireless and broadcasting; Currency, Coinage and legal tender; banking; foreign and inter-state trade and commerce; industries, the control of which by the Union is declared by Parliament to be expedient in the public interest; Census; taxes on income other than agricultural income; Customs and export duties; Corporation tax; taxes on the Capital value of the assets, exclusive of agricultural land, of individuals and companies; and taxes on the capital of companies.

The State List contains subjects which are primarily of local interest and which are best handled by the governments of the States. This list contains 66 subjects, the more important of which are: public order; police including railway and village police; administration of justice; local government; public health and sanitation, hospitals and dispensaries; relief of the disabled and unemployable; education including universities subject to certain exceptions; Land, land improvements and

3. Entry 17, List 1. 15. " 36.
10. Entry 52. 22. " 11.
12. " 82.
agricultural loans; forests; fisheries; water storage and water-

power; industries subject to the provisions of entry 52 of list 5;
trade and commerce within the State subject to the provisions of entry 33 of List III; production, supply and distribution of goods subject to the provisions of entry 33 of list III; taxes on agricultural income; estate duty on agricultural land; taxes on the consumption or the sale of electricity; and taxes on the sale or purchase of goods other than newspapers.

The Concurrent List consists of 47 subjects all of which bear a close affinity to the subjects in the State list but they can be left to be regulated by the States. They are subjects with respect to which a measure of uniformity throughout the Union is highly desirable. They are therefore placed under the joint jurisdiction of both the Union and the States. In this list are specified, among others, subjects such as: Criminal law; criminal and civil procedure; marriage and divorce; contracts; transfer of property; actionable wrongs; Bankruptcy and insolvency; trade unions; industrial and labour disputes; price control; economic and social planning; social security and social insurance; employment and unemployment; welfare of labour.

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1. Entry 19.
2. "" 21.
3. "" 17.
4. "" 24.
5. "" 28.
6. "" 27.
7. "" 46.
8. "" 48.
9. "" 53.
10. "" 55.
11. "", 1.
13. Entry 5
14. "", 7
15. "", 6
16. "", 8
17. "", 9
18. "", 22
19. "", 22
20. "", 34
21. "", 20
22. "", 23
including conditions of work, workmen's compensation, oldage
pensions and maternity benefits; relief and rehabilitation of
displaced persons; custody, management and disposal of evacuee
property; factories; electricity; and newspapers, books and
printing presses.

The legislative lists are exhaustive and appear to
leave no residue of legislative power unapportioned. But, as
the Joint Parliamentary Committee on Indian Constitutional Re­
form, 1934, remarked, "it would, however, be beyond the skill
of any draftsman to guarantee that no potential subject of le­
gislation has been overlooked, nor can it be assumed that new
subjects of legislation, unknown and unsuspected at the present
time, may not hereafter arise; and therefore, however, carefully
the lists are drawn, a residue of subjects must remain, how­
ever small it may be, which it is necessary to allocate either
to the Central Legislature or to the Provincial Legislatures."

The residuary powers of legislation are assigned
to the Union Parliament. "Parliament has exclusive power to
make any law with respect to any matter not enumerated in the
Concurrent or State List. Such power shall include the power
of making any law imposing a tax not mentioned in either of
those Lists." In this particular matter, the scheme of dis­
tribution of powers in our Constitution follows the Canadian
Precedent. The scheme in India is thus a combination of the
plan embodied in the Act of 1935 and the Canadian Plan.

2. ,, 27. 5. ,, 38. 8. Art. 248 and Entry 97, List 1.
3. ,, 41. 6. ,, 39.
It may be of interest to note that the location of the residuary powers has a history behind it. A bitter controversy arose on this problem when the Government of India Act, 1935, was on the anvil. The cleavage of opinion with respect to this problem was between the moslems and the non-moslems. The former wanted the future government of India to be a federation of autonomous Units with residuary powers lodged in the Units and the latter urged that the residue should be vested in the Federal Centre. As a compromise, it was resolved to vest the residuary powers in the Governor-General to be allocated by him, in his discretion, either to the Centre or to the Provinces. Before the Partition of India became an accomplished fact, it was proposed to vest the residue, as a concession to the demands of the moslems, in the Units. In fact, the objectives Resolution, which was based upon the plan contained in the Statement of the Cabinet Mission of May 16, 1946, envisaged a federation of strong units with residuary powers. When partition became a settled fact, the process was reversed and it was decided to allocate the residuary powers to the Union Centre. It may be emphasized here that, in view of the exhaustive nature of the Legislative Lists, the practical importance of this problem is not really much.

3. Para 15 (3)
As we have already seen, there is the concurrent legislative field which is considerably large, in which both the Union Parliament and the Legislatures of States are competent to make laws. When two authorities make laws with respect to a single subject in this field, it is quite conceivable that the laws might clash. In order to resolve such Conflicts and eliminate the inconsistency between Union Laws and State laws, it is provided that "if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law made by the Legislature of the State shall, to the extent of the repugnancy, be void." This is the usual provision made in all federal constitutions. But this general law in our Constitution is subject to one important qualification, viz., "where a law made by the Legislature of a State specified in Part A or Part B of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect 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

1. Art. 254 (1)
and has received his assent, prevail in that State. This is indeed a very novel provision, not found in any other constitution except in the Government of India Act, 1935. Although Parliament is supreme in the Union and Concurrent fields, this provision makes an exception in the case of State Legislation containing provisions repugnant to Union law in regard to a concurrent subject. It permits the President to allow such repugnancy. This is indeed inconsistent with the general principle of the legislatures being supreme in their respective field of legislation. This means that the Union Parliament is not inevitably supreme in case of conflict. This provision although inconsistent with the general rule of the supremacy of the Central Government in the Concurrent field in case of conflict between a law of the Centre and a law of the Unit, recognised in all federations, serves a useful purpose and therefore, should not be condemned. In a vast country like India there are bound to be peculiar regional and local differences which cannot be suppressed or ignored in any attempt at introducing uniformity. Their preservation may often be fundamental to the life of the people of the locality. Such differences have to be allowed to exist even if they go against the spirit of the general law. There might be some room for repugnancy and such repugnancy has to be condoned. This is what this particular provision seeks to achieve. The provision is also noteworthy in another respect. It introduces an element of flexibility in the relations between the Union and the States which may

1. Art. 254 (2)
2. Section 107
pave the way for harmonious cooperation between the two sets of authorities. It may also be hoped that the President will not exercise this power in a manner which will be resented by Parliament. Parliament is, in the last resort, empowered to protect itself against any State legislation, which in its opinion, impairs or interferes with the performance of the Union functions or is against the interests of the Union. The final proviso to this article makes the position clear. It is provided that "nothing in this clause (clause 2 of Article 254) shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State." This proviso restores the supremacy of the Union Parliament in the last resort, in the Concurrent field.

The Union Parliament is given certain important powers by specific constitutional provisions. Thus, "Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List." There is a similar provision in the British North America Act, 1867 which lays down that "the Parliament of Canada may, from time to time provide... for the establishment of any additional courts for the better administration of any additional courts for the better administration of the laws of Canada." In the Union of India, the same set of Courts

1 Art. 247. 2. Section 101.
shall administer both Union and State Laws. While the Supreme Court and the High Courts are Union subjects, the judicial organisation below these two courts is under the control of the States. It is, however, generally recognised that the power to provide for the administration of the laws is regarded as only incidental to the power to make laws relating to a subject. This provision only makes explicit what is implicit. Strictly speaking there is really no need for a separate provision of this sort. The Union can invoke this article only when the State courts have failed to make proper arrangements for the administration of Union laws. This, however, is only a remote possibility.

Parliament is also empowered "to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international Conference, association or other body." This is an important provision in our constitution for it removes some of the difficulties experienced by the older federations in the matter of concluding and implementing by legislation treaties entered into with foreign countries. The difficulty in this respect arises because of the division of powers between the Centre and the Constituent States. Broadly speaking, the Centre's legislative competence is limited to matters reserved to it exclusively and when there is a concurrent field, to all matters falling within that field. It has no jurisdiction over the

1. Entries, 77, 78 of List 1. 2. Entry 3, List II. 3. Art. 252, also entries 13 and 14 of List I.
legislative sphere of the Units. The power to conclude treaties or agreements with foreign powers is strictly a Central subject for it is included in "External affairs." When a treaty concerns a subject which falls either in the Union List or in the Concurrent list, no difficulty need be felt in the matter of giving effect to it for in both the areas the Centre's competence is unquestioned. But supposing a subject which falls in the State (Unit) List becomes embodied in an international agreement or treaty, the problem arises as to how to legislate upon it. Strictly speaking, the Centre cannot encroach upon the field reserved for the Unit. Although treaties and agreements embody only subjects of national and international importance, the possibility of a purely local subject forming the subject matter of a treaty or agreement cannot be ruled out as an impossibility. As a matter of fact, for instance, food and agriculture, which are purely provincial in their scope have figured prominently in international agreements. When such a situation arises, the position of the Centre becomes difficult. The present provision resolves this difficulty by clothing the Union Parliament with power to legislate even though the treaty pertains to a subject in the State List. Thus, in the act of implementing a treaty the Union can with constitutional propriety encroach upon the sphere of action of the States. This is as it should be. The division of powers is an internal matter. When India goes to International conferences or negotiates treaties with other countries, it acts as a nation with organic unity and not as an aggregation
of a number of units. In the international sphere India is one and indivisible and must have authority to speak and act for the whole country. It, therefore, stands to reason, that the Union must have full powers not only to negotiate treaties and agreements but also to give effect to them even though it might mean the invasion by the Union of the legislative sphere of the States. Moreover, in an important matter like this which involves the honour of a nation, it is unwise and wrong to place the Central authority at the mercy of the Units.

It would be very instructive indeed to examine what the position is in other countries with respect to this matter.

In the United States, the Constitution lays down that "all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." Thus all treaties are placed on the same footing as acts of the Congress. They are made supreme over the State laws. In the United States the treaty-making power belongs to the Congress, and it has been held that the Congress may properly legislate to carry out the terms of a treaty. The authority of the Congress is always upheld on the basis of the treaty-making power, irrespective of whether it comes within the enumerated powers of Congress or not.

1. Art VI (2)
Although the residuary powers vest in the States, in the exercise of its treaty-making power, the Congress can enter into a treaty with any country and that treaty becomes binding on the States notwithstanding the fact that the subject matter of such treaty may otherwise fall within the domain of the States.

In Australia there is no specific provision regarding the implementation of treaties. The constitution of Australia gives the Commonwealth Parliament power over "External Affairs." This power includes the power to enter into treaties and implement them by legislation. As in the United States, the Commonwealth Government in Australia can legislate on a subject embodied in an international agreement although it may trench upon the exclusive sphere of the States.

The position in Canada is rather different. The British North America Act provides that "the Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries." So long as the Dominion Government acted under the terms of this provision, it was quite competent to invade the sphere of even exclusive provincial legislation to give effect to its treaties. But when Canada entered into treaty relations with other countries directly, the provisions of

1. Sec. 51 (XXIX)
2. Dr. Wynes, Legislative and Executive Powers in Australia, P.209.
3. Sec. 132.
section 132 could no longer be applied in the new situation. The judgment of the Privy Council is that in spite of the Dominion Government possessing the treaty-making power and the general power for making laws for the peace, order and good government of Canada, legislative powers in the Canadian constitution remained distributed. The decision of the Privy Council in Attorney General for Canada Vs. Attorney General for Ontario and Others (1937) makes the position clear. In this case the Privy Council ruled as invalid certain Acts of the Canadian Parliament purporting to regulate conditions of labour in various ways, on the ground that the legislation related to a Provincial subject, although it was sought to be justified on the plea that it was necessary to give effect to certain international conventions which had been ratified by the Dominion of Canada. The verdict of the Privy Council was as follows: "The Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the Constitution which gave it birth... It must not be thought that the result of this decision is that Canada is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed and if, in the exercise of her new functions derived from her new international status, Canada, incurs obligations, they must so far as legislation be concerned, when they deal with provincial classes of subjects, be dealt with by cooperation between the Dominion and the Provinces."
Thus in the Dominion of Canada the established division of powers has to be maintained and respected even for purposes of legis­lation necessary to give effect to treaties.

A similar view was embodied in the Government of India Act, 1935 with respect to the implementation of treaties. It was provided that "the Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof." The Federal Executive under the Act had to obtain the previous consent of the Governors of the Provinces and of the Rulers of the Federated States before it could implement by legislation its treaties with outside countries in so far as they encroached upon the Provincial or State sphere. As pointed out earlier, if such restrictions become operative, the prospect before the Federal Government when it is negotiating treaties with other countries is none too cheerful. The Federal Government must be able not only to speak for the nation as a whole in its contacts and relations with the outside world but also be able to implement in the legislative field on its own authority obligations incurred by it under treaties and agreements negotiated by it with other countries, even though such implementation may involve the invasion of the normal field of the component States. From this point of view the present provision in our Constitution must be welcomed as wholly desirable.

1. Section 106.
Another noteworthy aspect of the scheme of division of legislative powers is the provision for the delegation of legislative authority to the Union Parliament by two or more States by mutual consent. Other States may adopt such legislation after it has been passed, if they so desire. The Constitutional provision in this behalf is as follows: "If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated by such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and an Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State. Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State." There is a similar provision in the Australian Constitution under which the Commonwealth Parliament can legislate on "matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State, or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopts the law." The Government of India Act

1. Art. 252. 2. Section 51 (XXXVII).
also provided for Central Legislation at the request of two or more provincial legislatures but it stated that "Any Act so passed may as respects any Provinces to which it applies, be amended or repealed by an Act of the Legislature of that Province." The present article in our Constitution prevents such repeal by unilateral action but provides that the Act may be amended or repealed by Parliament at the request of all the Legislatures concerned. It is only just that a legislation passed at the request of two or more legislatures and involving commitments on the part of all parties to it, cannot be allowed to be repealed or altered unilaterally by one of the Parties. For instance, it will, indeed be a disaster if Bengal or Bihar, is permitted to withdraw from the Damodar Valley Corporation without reference to the other parties. The present provision introduces a measure of flexibility into the scheme of distribution of powers. Further the delegation of legislative powers may be for a fixed period or in perpetuity or it may be subject to repeal at any time at the request of the parties concerned. It all depends upon the purpose for which such delegation is made. It helps the accomplishment of certain common purposes by two or more States on a cooperative basis. There are certain things which affect only a few States such as river valley projects, which require to be handled by an authority common to the States affected. The present provision provides the solution to such problems. It fosters the growth of regional cooperation within the Union and enables the Parliament to help

1. Section 103.
the parties concerned without having to go through the process of Constitutional amendment. Thus a change in jurisdiction may be effected on a temporary basis.

Overriding Legislative Powers of the Union Parliament

The Union Parliament is invested with some special legislative powers. It is empowered to legislate with respect to a matter in the State List in the national interest. It is provided that "if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary and expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force." A resolution so passed shall remain in force for one year at a time. The currency of such legislation can be extended by fresh annual resolutions. This provision enables the Union Parliament to transfer temporarily any item in the State List to the Concurrent List and legislate upon it. This in effect amounts to the alteration of the division of powers by unilateral action. Strictly speaking this is a power which is to be exercised only in emergencies, but this provision can be invoked even in normal times. It is true that matters which are purely local in scope and character, might by the operation of time and other factors become matters of general interest and in their new aspect, they become competent subjects 1. Art. 249.
of Union legislation. But the expression "national interest" is too wide in scope and covers a variety of subjects. Almost all items in the State List could somehow be brought under it. The Parliament in the name of "national interest" can at any time invade the State List and take over powers of legislation on any item in that list even though it be for a temporary period.

This power was exercised by the Provisional Parliament. It passed a resolution on August 12, 1950, assuming powers on entries 26 and 27 in the State List for the effective control of black marketing. The resolution is as follows:

"That this House do resolve, in pursuance of Article 249 of the Constitution as adopted by the President under Article 392 thereof and as at present in force; that it is necessary in the national interest that Parliament should, for a period of one year from the 15th of August, 1950, make laws with respect to the following matters enumerated in the State List: (1) trade and commerce within the State subject to the provisions of entry 33 of List III and (2) production, supply and distribution of goods subject to the provisions of entry 33 of List III."

By a Removal of Difficulties Order the President adopted Article 249(1) substituting Parliament for Council of States.

The foregoing account of the legislative relations between the Union and the States relates to normal times only.

1. This Article relates to the Power of the President to remove difficulties in the transitional period.
The Constitution has also made elaborate provisions for dealing with emergencies. As will be evident presently the legislative powers of the Parliament are sweeping in emergencies and the States come under the control of the Union. The nature of the legislative relations between the Union and the States will depend upon the nature of the emergency itself. Three types of emergency are contemplated in the Constitution. In the first place, an emergency may occur when "the security of India or any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance." Secondly, there might be an emergency when "a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution." In other words, there may be a failure of the constitutional machinery in the States. Thirdly, there may be an emergency when "a situation has arisen whereby the financial stability or credit of India or any part of the territory thereof is threatened." These three types may be called respectively as emergency due to physical breakdown, political breakdown and economic breakdown.

A proclamation of an emergency due to physical breakdown differs in certain respects from a proclamation of emergency due to political breakdown. We are not here concerned with the emergency due to economic breakdown. It will come up for consideration in a later chapter. The two kinds of emergency differ not only as to the grounds leading to their

1 Part XVIII, Articles 352-360.  2 Art. 253.  3 Art. 356.  4Art. 360.
proclamation but also as to the effects. In the case of a proclamation of emergency under Article 352 (physical breakdown) the object is to confer greater powers of control on the Union authorities. The State authorities will not, however, cease to function. But the Union will exercise concurrent powers of Legislation as regards the matters in the State List. The Legislative competence of the Union Government gets automatically widened and the limitations placed upon it as regards the State List by Article 246 (3) are completely done away with. The State List will become part of the Concurrent List until such time as the emergency is in operation. The proclamation in this case will not suspend the State Legislatures. They will continue to function. Only the distribution of powers is suspended and the Union Government becomes completely unitary exercising full powers over the constituent States.

The situation is different when a proclamation is issued owing to the failure of the constitutional machinery in the States. In this case the State Legislature is suspended. The Legislative powers are taken over by the Union Parliament. The Parliament may exercise State legislative powers itself or may delegate them to the President subject to its ultimate control, with powers to the President to 'sub-delegate' them. The President may also authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament. The justification for a proclamation of an emergency

of this kind is that the Union owes an obligation to the States in the matter of protecting every State against external/disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution. The Constitution of U.S.A. and Australia provide for similar protection of the Units by the Central Government. In the United States, the Federal Government guarantees to every State republican form of government, protection against invasion and protection against domestic violence. The last one is given only on the application for such aid by the State Legislature or the State Executive. The Constitution of Australia provides that "The Commonwealth shall protect every State against invasion and, on the application of the executive government of the State, against domestic violence."

The obligation of the Union Government to the States under our Constitution is sought to be discharged by a two-fold power. The President is empowered to make a proclamation of emergency on grounds of war, external aggression or internal disturbance conferring wider legislative powers on Parliament to control the affairs in a State. The President can also make a proclamation in case the constitutional machinery breakdown in a State or when any State refuses to discharge the obligations imposed upon it by the Constitution, and suspend the State Legislature and executive and withdraw their powers to the Union Centre.

1. Art. 365. 2. Art IV Section 4. 3. Section 119.
The expression "Government cannot be carried on in accordance with the Provisions of this Constitution," is sweeping and wide in scope. It has no necessary connexion with external aggression or internal disturbance or violence although these may be the cause of failure of constitutional machinery in particular cases. When these take place so as to cause a physical breakdown of the machinery of the State proclamation under Article 356 can obviously be made if Articles 352-3 prove inadequate. This Article may also be invoked where there is a political breakdown, such as for want of a stable majority even after the dissolution of the legislature. A failure within the scope of the present Article may also arise in case of abuse of constitutional powers by a State Government. It is interesting to note that in June, 1951 a proclamation of emergency under this Article was made in the State of Punjab by the President. The emergency was the result of a very peculiar situation which was not anticipated by the Framers of the Constitution. In June, 1951, the Chief Minister of the Punjab handed in his resignation and that of his Ministry to the Governor in obedience to a directive of Congress Parliamentary Board. He also informed the Governor that no other member of the Congress Party - which held 70 out of 77 seats in the Assembly - would form the Government. The Governor of the State, on satisfying himself that no congressman was prepared to form the Ministry and that no purpose would be served by inviting a member in the minority group reported to the President on the 16th June, 1951, that a situation had arisen in Punjab in which the Government
of that State could not be carried on in accordance with the Provisions of the constitution. The President on the basis of the Governor's Report issued a Proclamation of emergency on the 20th June, 1951 in the State of Punjab under Article 356. He assumed to himself all the functions of the Government of Punjab and by a separate order directed that these functions subject to the superintendence, direction and control of the President be exercised by the Governor of that State. The Parliament stepped into the place of the State Legislature. It approved the Proclamation on the 9th August, 1951 and passed The Punjab State Legislature (Delegation of Powers) Bill on August 17, 1951 which gave the President power to legislate, subject to the ultimate authority of Parliament, for the State of Punjab. Under this Act, the President passed the Punjab Security of State Act, 1951 (President's Act of 1951), on September 12, 1951. The net effect of the Proclamation of emergency under Article 352 is to transfer the whole of India into a Unitary State for the duration of the emergency, and of the proclamation under Article 356, to make the Union partially a Unitary State.

We may here make a few general observations on the division of powers between the Union and the States. In the first place, the division of powers in our constitution has not proceeded on any a priori theories. In the United

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2 Ibid. 4. Ibid, 22.9.1951.
States, the doctrine of "State Rights" was a potential doctrine at the time of framing the Constitution. The thirteen American States were independent and enjoyed complete sovereignty before they entered into the Federal Union. They were naturally jealous of their sovereign rights. It was this doctrine that led to the enumeration of the powers of the Federal Government and to the location of the residue in the States. In the Dominion of Canada, the distrust of the doctrine of "State Rights" led to the strengthening of the Centre at the expense of the Units. The Founders of the Canadian Constitution believed that the doctrine of "State Rights" was mainly responsible for the Civil War in the United States. They decided to best the residuary power in the Centre. Macdonald said, "Here we have deliberately adopted a system different from that in the United States. We have strengthened the Central Government. We have given the Central Legislative all the great subjects of legislation. We have conferred on it not only specifically and in detail all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest not directly and exclusively conferred on the local governments and local legislatures, shall be conferred on the Central Government and legislature. We have thus avoided the great source of weakness which has been the cause of the present disruption in the United States." The position of the six Australian Colonies before they became federally united approximated more to that of the American States than to that of the Canadian Provinces. Although they were not under any
extreme necessity to surrender their individual existence. It was to them a matter of convenience. They gave the Centre what was absolutely essential. The States in the Indian Union were never sovereign. The entry of what were formerly the Provinces into the federal Union was compulsory. Although it was optional in the case of Indian States, yet there was the compulsion of events which left them practically no choice in the matter.

Secondly, although the plan of distribution of powers is not based upon any theoretical consideration, it is influenced by the lessons of Indian History. The history of India makes it abundantly clear that the unity of India in its political aspect was more apparent than real. Excepting in the heydays of the Mauryas or of the Guptas, of the Pathan or of the Mughal rule, India could never resist foreign invasion and disunity. The Bactrian Greeks and the Scythians found India divided. So did Ghorı and Babar. After Baber, Akbar found the Pathan empire dismembered. The English saw Tippu and the Marathas fighting and the Nizam afraid of both. As Dr. Sachidananda Sinha has observed: "The outstanding feature of Indian history is that so long as the Central Government had been strong and capable of controlling the Provinces, law and order had reigned supreme, and the State had remained an integrated whole; while once the Central authority had weakened, disruption had immediately set in." It was this supreme lesson of Indian history that led our constitution-makers to make the Centre strong by arming it with adequate powers so that the repetition of past happenings might be averted.

Thirdly, no less influential than the lesson of history was the logic of events which happened at the time of framing the Constitution. The country was passing through a series of unprecedented crises. There were the acute economic problems inherited from the second World War, deficiencies in the country's food supply which was aggravated further by the partition of India, the influx into India of several million persons displaced from their homes and occupations after the Partition and a succession of indifferent harvests. Moreover, there were several fiésparous tendencies at work trying to undermine the foundations of the new State. In a vast country like India with obvious linguistic and ethnic differences, there are bound to be centrifugal forces at work. These forces have got to be kept under control, else they will overwhelm the Centre and produce chaos. Only a strong Centre could keep these anti-national forces in check and preserve the Unity of the nation. It is no wonder that the Union is invested with overriding powers to invade the normal sphere of States even in normal times, not to speak of emergencies. Moreover, planning and reconstruction of our economy on a vast scale is going to be launched and the responsibility for direction and control of this vast operation ought to rest with the Centre. This can be handled only on an All-India basis and who can deny that the only agency which can handle it is the Centre? In fine, the distribution and allocation of legislative power has been affected in the main, by the political and economic conditions prevailing in India at the time of making the constitution and not by any a priori theories as to the principles of
distribution in the constitution of a Federal Government.

The entire scheme of distribution displays a trend towards greater concentration of powers at the Centre. This is, of course, in keeping with the latest trends in other federal constitutions. The federal systems now functioning in various countries were established when those countries were still in the pre-industrial stage of economy. But since their establishment over long periods of judicial interpretation and constitutional amendment there has been a significant expansion in the powers of the Federal Centre. War, economic depression, revolution in Industry and transport and communications have created new social and political situations which necessitate a redefinition of what are local and national concerns. The complexities of life produced by these factors compel the intervention of the supreme government in economic matters. Moreover, changes in practical conditions and political thought have also emphasized the shift towards the Centre. The welfare State has come to stay and the role of State has become more positive. In the face of these factors all federal governments have strengthened themselves at the expense of their Units. In the U.S.A., the original division of powers has almost been reversed. In Australia Wheare discovers "tendencies at work which may make it necessary soon to describe its constitution and its government as quasi-federal." Another observer finds

that "the original Federal balance, as conceived in 1900, has been seriously upset by developments of the past half century which have led to the aggrandisement of the Commonwealth and the decline of the States." In Canada, the Dominion Government has always been strong and in Switzerland, constitutional amendments have conferred more powers on the Federal Centre. In fine, the plan of distribution in India has taken note of the developments elsewhere and of the needs of the country and the time. In the works of Shri C.P. Ramaswami Iyer, "What notwithstanding the fiercely avowed intentions and policies of the founders of the American Constitution, has taken place in the United States and what local and provincial patriotisms have been unable to prevent in Canada and Australia, has now been statutorily formulated in India." It must not, however, be imagined that the States have been reduced to insignificant entities. Far from that. There has no doubt been a well-marked enlargement of the Central Sphere. But the States are also left with large powers especially in the field of developmental and welfare work. This aspect will be more fully elaborated in a later chapter.

**Legislative Control**

Although the legislative spheres of both the Union and the States have been statutorily demarcated, the division is effected in such a manner as to place the Union Parliament in a position of superiority over the State Legislatures.

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It will be here shown that the Union Parliament can control to a considerable extent the legislative activity of the State Legislatures.

As we have already seen the subjects of legislative power are enumerated fairly completely in three Lists known respectively as the Union List, the State List and the Concurrent List. As between these three lists, in case of overlapping of jurisdiction, the predominance of the Union power is established. If there is overlapping between a subject falling within the Union List, the subject to the extent of the overlapping is one which is deemed to be federal on which the States cannot legislate. Again, if there is any overlapping between the Union List and the Concurrent List, it is again treated as being exclusively a Union subject. Further, if there is overlapping between the Concurrent and State Lists, the subject is treated as being within the Concurrent List thus giving the Union Parliament power to legislate on that subject. We have in our country the longest list of Concurrent subjects. The existence of such a list will inevitably lead to the Centre encroaching upon the sphere of the States and thus impart a unitary bias or character to our Constitution. It tends in course of time to blur the distinction between the Centre and the States. "In the course of time," observes Mr. K. Santhanam, "it is an inevitable political tendency of all Federal Constitutions that the Federal List grows and the Concurrent List fades out, because when once the Central Legislature takes jurisdiction over a particular field of legislation, the jurisdiction of the provincial
Legislature goes out. Therefore, we may take it that in ten years or fifteen years' time the entire Concurrent List would be transformed automatically into the Federal List."

The Union Parliament is given special powers of legislation whose exercise will involve the invasion of the legislative sphere of the States. One or two instances of this kind may be mentioned here. As we have noticed earlier the Union Parliament has power to give effect by legislation to the treaties and agreements entered into with other countries by the Union Government. This power is sweeping and cuts across all distinction between the Union sphere and the State sphere. The Union can legislate on its own authority on a State subject for purposes of giving legislative operation to a treaty or convention which it has ratified. Although there is every justification for a provision of this sort, its effects upon the legislative autonomy of the States has to be considered. No constitutional obligation to consult the States in this matter is placed upon the Union. It is true that treaty-making power belongs to the General Government in all federations, but in none of them is it supposed to alter the distribution of powers as laid down in the constitution. In the U.S.A. the treaty is binding on the States notwithstanding the fact that the subject matter of the treaty may otherwise fall in the domain of the States. It should be noted that the Senate shares with the executive the power to make treaties. The

Senate represents the States on a basis of equality. The treaty becomes valid only after being assented to by the Senate. This means the States have an effective hand in the negotiation and ratification of treaties. Moreover, it is the treaty that becomes the supreme law of the land. This in reality does not bring about any change in the distribution of powers. The legislative powers of the Congress are in no way enhanced.

In Canada the division of powers is respected even for purposes of implementation of treaties. In India, this power amounts to the modification of division of powers in an indirect manner. The Union can gradually bring under its legislative jurisdiction almost all subjects reserved exclusively for the States. That this is a practical possibility becomes evident when it is realised that the Union has power to give legislative operation not only to treaties but also to agreements and conventions. It is pretty well known that in recent years the scope of agreements and conventions has become extremely wide. There is, perhaps, no subject of any importance within the competence of the States which is not affected by an international agreement or convention. The Union can enter the field reserved for the States and cover it with a network of its own laws. When such a thing happens, the balance of power as between the Union and the States would be upset. The legislative autonomy of the States would be seriously impaired.

It has been pointed by Shri K.M. Munshi that
there is really no threat to the autonomy of the States in a provision of this sort. He argues: "Before a decision is implemented it will come before the Central Legislature; that Legislature will fully debate upon it; and it will then decide whether it will implement that decision or not. It is not going to be taken behind the back of the representatives of any member of the Union; it means not only that Lower House but also the Upper House as well, - the House of States. Therefore the representatives of the whole of India - the people as well as the States - will have the right to vote upon it and bring to bear upon it the influence of an all-India {quote}opinion." This is the safeguard that Mr. Munshi finds to protect the autonomy of the States. It is true that the Council of States, the Upper House, which will consist of the Representatives of the States, will also debate upon the treaty or agreement before it is ratified and given legislative effect. But the Council of States, is not like the Senate in the United States. It does not share with the executive like the U.S. Senate, the treaty-making power. It is purely a second chamber in every sense of the term. Moreover, it is not based upon the equality of representation of the States. In the face of these facts, the value of the safeguard that Mr. Munshi has found is really not much. The Union, in the act of exercising this power will limit the legislative field normally reserved to the States by the Constitution.

There is another legislative power given to the Union whose effects are adverse upon the States. It is the power of the Parliament to legislate on a subject in the State List in the national interest. Although this power is exercised by a resolution of the two-thirds majority of the members of the Council of States, it constitutes an infringement of the autonomy of the States. The Fourth Schedule to the Constitution makes it clear that the States have no equality of representation and therefore, the consent of the Council of States does not mean in reality the consent of the States.

The exercise of this power (although for a temporary period of one year at a time) like the exercise of treaty-making power, brings about a change in the distribution of powers. The change is effected by the unilateral action of the Union Centre. Such an action is not permitted in any other constitution. The division of powers in the U.S.A., is rigid and the Power to alter it does not lie in the hands of the Federal Government of the States alone. None of the parties to the Federation can change, by unilateral action, the distribution of powers guaranteed by the Constitution. The Congress cannot transfer to itself any power granted to the States. The only way to alter the scheme of distribution is the process of amendment which involves the consent of the States. Similar is the case in Australia in this respect. In Canada, the Dominion Government has power to legislate for "the peace order and good government of

1. Article 249.
2. See appendix.
Canada." But the Canadian Parliament has no power to legislate on a matter falling directly within the exclusive sphere of the Province. The Dominion has no power to upset the Constitutional distribution of powers, by its unilateral action. In time of crisis or emergency what was originally a matter of local importance may assume national importance. When the emergency disappears the matter may cease to be of national significance and it would then revert to the local jurisdiction. It is for the Courts and not for the Dominion Parliament in Canada, to decide the line of necessity in each case. The founders of our Constitution, in their anxiety to impart greater strength to the Union Centre have gone beyond the British North America Act. Our Parliament can alter the division of powers unilaterally and it can do so even in normal times. Moreover, the decision as to whether a subject in the State List has become a fit subject for legislation by the Union, can be taken by the Parliament itself and not by the Courts. The phrase "necessary or expedient in the national interest" is wide enough to cover any matter which has incidence over the country as a whole as distinguished from any particular locality or section of the people. This provision is a little mischievous though the mischief is only for a temporary period. When it is invoked, it converts the Union temporarily or partially into a unitary State. These two provisions (viz., Articles 253 and 249) emphasize the unitary aspect of our Constitution in normal times. The Union Parliament can with constitutional sanction invade the State sphere of legislation even in normal times.

1. Section 91.
In periods when a proclamation of emergency is in operation under Article 352 the whole Union is transformed into a Unitary State and the legislative autonomy of the States becomes almost extinct. When a proclamation of emergency under 366 (breakdown of constitutional machinery in the States) is in operation the State concerned becomes subject to the control of the Union and the Union will become a Unitary State so far as that State is concerned. The Union thus exercises overriding legislative powers over the States not only in emergencies but also in normal times. The States function within a limited area. Whether the exercise of these special powers by the Union will tell upon the sense of responsibility and initiative of the States, only time can tell. Much will depend upon the way in which the constitution is worked and it is too early to deliver the verdict on this problem. One thing, however, is certain. It is that the Centre is made very strong and if it minds it can use its powers to keep the States under its subordination and control. We may well hope that in the interests of democracy the Centre will so use its vast powers to develop and foster in the States a sense of initiative and responsibility.

Legislative Cooperation

The division of powers in a Federation has always an element of artificiality about it. It tends to divide the powers of government into nicely balanced areas. Government in the final analysis is a single integrated process and no part of it can work with efficiency without relation to the other parts.
Federalism means division of governmental authority. It means competition for power. It is this competition, inherent in federalism that tends to develop rivalry between the Centre and the Units. But fortunately, in recent times, it has come to be increasingly realised that in the sphere of new social and economic conditions, it is cooperation and not competition that leads to the success of the federal Union. It is admitted by all that Federal and State relations stand in need of a new outlook. The old federalism in which the federal government and the Units, each went their separate ways without much regard to what the others were doing is giving place to the new Federalism, a cooperative federalism. With the development of social security and of business of all kinds in the federations in recent times there must be this cooperation to carry out functions which neither the Centre nor the States can do alone. New techniques of ensuring this cooperation are being thought of in all federations. One of the prominent features of the constitution of our Republic is that it embodies this idea of cooperative federalism and various devices for putting this idea into practice have found a place in it. The essence of cooperative federalism is to eliminate the idea of competition for power and to provide a cooperative basis for Federal-State relations. This idea is very well brought out by the Royal Commission of Dominion-Provincial Relations in Canada. The Commission observe: "National Unity and Provincial Autonomy must not be thought of as competitors for the citizen's allegiance for, in Canada at least, they are but two facets of the same thing - a sane federal system. National unity must be based on provincial autonomy and provincial autonomy cannot be assured unless
a strong feeling of national unity exists throughout Canada."

An attempt will now be made to point out the cooperative devices in the legislative field and the extent of legislative cooperation between the Union and the States.

One of the most important cooperative devices in the legislative field is the principle of concurrent powers as distinguished from exclusive powers. Although in certain matters exclusive jurisdiction may be the only reasonable course, it tends to develop an exaggerated idea of the independence and autonomy of the two sets of government in a federation. The idea of concurrent powers, on the other hand, is based upon the assumption that the two sets of governments can be completely autonomous in a few matters only and that there are many matters in respect to which they have to work in close collaboration and cooperation. There is also another idea implicit in the plan of concurrent jurisdiction. It is this. The subjects of legislation included in the Concurrent List have two vital aspects - the national and the local. They are predominantly local in character but they are also matters with respect to which a large measure of uniformity throughout the Union is very desirable. It is therefore not proper to assign them wholly to the Centre or to the States. Both must have jurisdiction over them and each should seek to regulate particular aspects in relation to them. A large measure of cooperation between the Centre and the Units is thus indispensable in the field.

The Union can enact normative legislation in this field and lay

down the general standards. The Units can work out the details in conformity with such standards with due regard to the varying local conditions, and circumstances. For instance, in the Weimar Republic, the Reich had legislative powers to lay down general rules of uniformity in regard to taxes, sanitary administration, the maintenance of public order, education, land laws, etc. The Union Centre may also fix up what may be called the essential minimum and allow the Units to function as they like by way of adding to the minimum.

The Union can also develop a convention viz., to consult the States before introducing regulatory legislation in this field. Such consultation will bring to light the difficulties and obstacles in the way of uniformity and it will also enable the States to cooperate with the Centre in this respect. The States will feel that their interests are being respected and that the Centre is really enhancing their status and sense of responsibility.

In the Constitutions framed in early days the Concurrent lists are small. In Canada Agriculture and immigration into provinces are concurrent subjects. The Royal Commission (1940) suggested the inclusion of fisheries, employment offices, social insurance, transport and marketing in the list of Concurrent subjects. The Commission also recommended that the Dominion Government might fix basic standards in regard to minimum wages, minimum age of employment and maximum hours of work leaving to Provinces the power to impose such higher standards

1. Articles, 8-11.
as they desired. In Switzerland the Concurrent field is smaller than in Canada. In Australia it is quite extensive. In the United States, too, it is considerable. But the list is the longest in India. It includes as many as 47 items. In India, the Concurrent field provides a wide area of cooperation between the Union and State Governments.

In all modern federal governments the concurrent jurisdiction is always associated with the provision that when the laws of the general government upon matters in the concurrent field conflict with the laws of the regional governments in that field, then the regional laws must give way to the general laws to the extent of their repugnancy. But in India an exception has been made to this general rule. A State law on a concurrent subject can prevail in spite of repugnancy to the Union law on the same subject if it has been reserved by the Governor or the Rajpramukh, as the case may be, for the consideration of the President and has received his assent. The object of this exception to the rule is to meet the requirements of the peculiar local conditions or circumstances. The Union thus tolerates a state law even though it may be repugnant to its own law. The Centre is thus extending its hand of cooperation to the States in the matter of legislation.

Cooperation between the Union and the States can also be brought about by means of inter-governmental delegation of powers, for which provision has been made in our Constitution.

The scheme of distribution of powers in a federation is not always satisfactory. In most cases it is imperfect. It may so happen that a subject which must be dealt with by the Centre in the interests of uniformity and convenience may have been assigned to the Units. Experience will suggest that it must be transferred to the Union. But a transfer can be effected only through the process of constitutional amendment which in practice is found to be not always easy. It is also possible that the Units may not desire to part with that subject for all time. They may want to explore as to what extent such a transfer will be beneficial to them. They may even like the power to be exercised by the Centre for a short period only and until their objective is attained. All this is made easier if there is provision for inter-governmental delegation of power. The Canadian Royal Commission favoured the inclusion of such a provision in the Canadian Constitution. The Australian Constitution contains a provision for delegation. In India it is provided that Parliament can legislate for two or more States with their consent and that other States may adopt such legislation afterwards. This provision promotes cooperative relations not only between the Union and the States but also among the States themselves. As the provision stands at present delegation is a one-way traffic. Only the States can delegate legislative powers to the Union. One would very much wish that delegation was a two-way traffic and that there was provision for delegation by the Centre to the States in the Constitution.

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2. Section 51 (XXXVII).