CHAPTER III.
ADMINISTRATIVE RELATIONS.

The problem of framing a constitution for a federal Union does not end with the division and allocation of legislative power between the federal Centre and the Units. There is another problem, the problem of dividing the administrative power between the two sets of governments. This problem is more vital than that of dividing legislative power. Mere legislative power is not of much use unless it is backed up by the necessary administrative power. It is, therefore, absolutely necessary that each government should in respect of the subjects allocated to it have the power not only to enact appropriate laws but also to put them into effect through its own machinery of officials. The weakness of a confederation lies in the arrangement that the general government government has to depend upon the confederate States to give effect to its legislative decrees. The Federalist describes the danger inherent in this system as follows: "If, therefore, the measures of the confederacy cannot be executed without the intervention of the particular administrations, there will be little prospect of their being executed at all. The rulers of the respective members whether they have a constitutional right to do it or not, will undertake to judge the propriety of measures themselves. They will consider the conformity of the things proposed or required to their immediate interests or aims, the momentary conveniences or inconveniences that would attend its adoption. All this will be done; and in a spirit of interested and suspicious scrutiny, without the knowledge of national circumstances and reasons of State, which is essential to
a right judgment, and with that strong predilection in favour of local objects which can hardly fail to mislead the decision." This was indeed the experience of the United States when it was a confederation. The Congress possessed only powers of Legislation and not of administration. The governments of the States, although expected to give effect to the decrees of the Congress, were generally indifferent in the matter.

It must not be supposed that this defect is peculiar to confederations only. It is present even in federations where one government depends for the administration of its laws upon the other. In the German Empire, which was a federal state, the constitution failed to invest the Centre with administrative powers. The result was many laws, which were of a vital character, were not enforced by the governments of the component States. This defect was remedied to a considerable extent when the German Empire was transformed into a Republic in 1919. The Centre was given a larger measure of administrative authority. In the U.S.A., when it became a federation in 1787 the Congress was given the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

There are differences among federations in respect of the distribution of administrative powers. The United States has adopted the simplest method. The Federal Government has its own organisation

3. Art I, Sec. 8, Cl. 18.
of federal services throughout the area of the federation operating directly upon the citizens and carrying out the laws passed by the Congress under the orders of the Federal Executive. The Dominion of Canada and the Commonwealth of Australia have followed the example of the United States but not completely. In Switzerland, on the other hand, the federal measures are administered by the Cantons. The Constitution does not permit the federal authorities to maintain executive agents in the Cantons and all federal measures are put into execution by the local authorities. The Cantons of Switzerland have been in enjoyment of a large measure of autonomy and they have an intense suspicion of central authority. Switzerland has therefore adopted the system of administrative decentralisation.

The system of administrative decentralisation has, no doubt, certain outstanding values. It avoids the duplication of administrative machinery and is more economical. It also facilitates the application of federal laws by officers who are familiar with local interests and prejudices. Administrative decentralization becomes indispensable in the administration of certain social security measures, particularly in countries of vast dimensions like the U.S.A., Canada and India. Social security measures have to be applied with due regard to regional and local differences and more often that not, the governments or the component States provide the best agency for their administration. In some countries there is the practice of local laws being administered by the Central authorities. This practice obtains particularly in the field of finance. Some taxes levied by State governments are collected by the Central Government. This was the case in the German Republic.

The system of administrative decentralisation is not without its defects. A major defect is that there is no guarantee that the laws of one government will be administered properly by the other. The system will not work satisfactorily unless the central government exercises general powers of supervision and direction over the governments to whom the administration of its laws is entrusted. It must also be in a position to force a recalcitrant State to obey its instructions. The danger of such federal control and supervision is that it leads to the encroachment of the Central power on the autonomy of the Units and ultimately to the transformation of the autonomous units into mere administrative districts carrying out the behests of the federal authority. There is thus some amount of inconsistency between federalism and the execution of the laws passed by the central government by the administrations of the component States. The best method is, of course, for each government to have its own administrative machinery to enforce its laws. While this should be the general rule, exceptions there will have to be. In the present altered social and economic conditions each government will have to rely inevitably upon the other for the administration of its policies and measures. Local governments have a vital part to play in the execution of Central laws, especially when those laws touch the local needs and peculiarities. They may act as advisory bodies to the central agency offering helpful suggestions and where needed active assistance.

In India, the Constitution divides not only the legislative power but also the administrative power between the Union and the States. The general principle that in a federation the executive power of the two sets of governments should be co-extensive with their legislative power is recognised. It is clearly stated that
"the executive power of the Union shall extend - (a) to the matters with respect to which Parliament has power to make laws; and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement; provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State specified in Part A or Part B of the First Schedule to matters with respect to which the Legislature of the State has also power to make laws."

The Union government will have exclusive power executive power for the administration of laws made by Parliament under its exclusive powers and in the exercise of its treaty-making powers. Similarly, the executive jurisdiction of the States is limited to the matters with respect to which the Legislatures of the States have power to make laws.

As there is a concurrent field over which both the Union and the States have jurisdiction, the executive power of the two in respect of this field has to be defined. The authority to execute laws in the concurrent field whether they were enacted by the Central Legislature or by the Legislatures of the States would ordinarily belong to the States. But if in any particular case Parliament thought that in passing any law relating to the Concurrent field, the execution ought to be retained by the Union, Parliament should have the power to do so. This is made clear in the following words: "In any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly

1. Art. 73.
2. Art. 162.
conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof." This provision ensures that the legislation of the Union in the concurrent field may be effectively executed (in the event of any State not properly carrying it out) by empowering the Union to take upon itself the task of administering its laws in that field. In certain cases the concurrent sphere creates what may be called a 'twilight zone' and tends to the blurring of responsibilities of the Centre and the Units. The present provision avoids such blurring of responsibility and makes quite clear the extent of the executive power of the Union as well as of the States in the concurrent field. In this field too, the general principle that executive power must be co-extensive with legislative power has been recognised. It may be noted that this view is in accord with the view taken in Australia as regards the executive power in relation to the Concurrent field. The view of Dr. Wynes is that "where the Legislative power of the Commonwealth is exclusive, e.g., in the case of defence, the executive power in relation to the subject of the grant inhere in the Commonwealth; but in respect of Concurrent powers, the executive function remains with the States until the Commonwealth legislative power is exercised." The supremacy of the Union in respect of executive power over the concurrent field is fully established. There was an anomaly in the Government of India Act, 1935, in this respect. Under the Act, the Central Legislature had power to make rules relating to a subject in the Concurrent field but the executive power was vested in the Provinces and the federated States although the Centre could issue

1. Proviso to Art. 162.
directions as regards the administration of a certain part (Part II, relating to social welfare, labour welfare, factories etc.) of the concurrent List. The Federal Legislature was used as an instrument of Legislation in this field but the scope of federal administration was not similarly extended. This arrangement is hardly satisfactory and leads to a kind of undesirable dependence of the Centre upon the Units in the matter of the administration of its laws. The Union under the present Constitution will not suffer from any such limitations. The Union may not be able to administer its laws in relation to the subjects in the concurrent field through its own personnel. It will have to entrust the administrative business to the Units in many cases. The Concurrent subjects are, of course, predominantly provincial and their administration wherever possible must be through the agency of the Units. But wherever the Centre takes over any matter it must exercise its powers without fetters. This is made clear. As Mr. Santanam has observed "ordinarily the executive power will vest with the State while it will be open to Parliament to give executive power to Central Government on any Concurrent subject. Logically it will be open to Parliament to vest the entire executive power over the Concurrent field in the Centre, but, in practice, it will not seek to extend the powers of the Centre more than is found to be absolutely necessary in the national interest."

A distinguishing feature of our Constitution is that it permits the creation of a common public service which will serve the needs of both the Union and the States. In a federation there

1. Sec. 126.
will be a dual public service - the Central public service or the Federal public service and the public services of the Units. But in India there are already in existence certain services - organised on an all-India basis - common to the Union and the States. These are the Indian Administrative Service and the Indian Police Service. The need for such all-India services is explained by Dr. Ambedkar as follows: "The dual polity which is inherent in a federal system... is followed in all federations by a dual service. In all federations there is a Federal Civil Service and a state Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with the exception. It is recognised that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil services there shall be an All-India Service recruited on an All-India basis with qualifications, with uniform scales of pay and the members of which alone could be appointed to these strategic posts throughout the Union." The Constitutional provision in this behalf is "if the Council of States has declared by resolution supported by not

1. Entry 41, List II.
2. Entry 70, List I.
less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States, and, subject to the other provisions of this chapter, regulate the recruitment and the conditions of service of persons appointed, to any such service. The Indian Administrative Service and the Indian Police Service were given a constitutional basis and declared to be services created by Parliament under this provision. The resolution of the Council of States is presumed to ensure that the creation of such a service is acceptable to the majority of States. An integrated All-India Service adds to the cohesion of the federal structure and certainly to greater efficiency in the administrations of the Union as well as of the States. The shape of the administrative structure in the States will be largely determined by the Union in whose hands rests the creation of an all-India service, the members of which alone could hold key positions in the States. Here lies a unitary element in our federal structure.

Although the extent of the executive power of the Union and the States has been made specific, certain obligations are imposed upon the States in the exercise of their executive power. "The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may

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1. Chapter I of Part XIV.
2. Art. 312 (1)
3. Art. 312 (2)
appear to the Government of India to be necessary for that purpose."

The Union has no exclusive administrative machinery for administering its laws. Since the Union has legislative authority throughout the territory of India, any law enacted by Parliament shall have the force of law in every State unless the contrary is expressed in the enactment. It is therefore, the Constitutional duty of every State so to exercise its executive power as to ensure compliance with Union laws and the Union has the power to issue such directions to the States as may be necessary for this purpose. In other words, the Union Government can direct any State to exercise its executive power in such a manner as may be desired by the Union Government. There was a corresponding provision in the Government of India Act, 1935, which imposed a reciprocal obligation on the Central Executive that it should have regard to the interests of the Province or State in the exercise of its executive authority. There is no similar obligation imposed on the Union executive under the Constitution. The obligation is one-sided and the States owe it to the Union and not vice versa.

Further, the Union is empowered to exercise executive control over the States in particular cases. The duty of so exercising their executive power as not to impede or prejudice the exercise of the executive power of the Union is enjoined upon the States. The States, in other words, are expected to co-operate with the Union in giving effect to its executive policies. This means that the States cannot

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1. Art. 256.
2. Art. 254 (1)
3. Sec. 122.
exercise their exclusive executive power over the subjects contained in the State List with any sense of independence. They must always see whether their executive orders are in consonance with those of the Union. Moreover, even in this exclusive sphere of the States, the Union can step in. It can issue directions to any State as to the way in which their exclusive executive power may be exercised. Not only is the Union vested with the general power to issue directions to the States as to the exercise of their executive power, but it can issue specific directions to them in particular cases. It can issue instructions to a State as to the construction and maintenance of means of communication declared to be of national or military importance. Communications, i.e., roads, bridges, ferries, municipal tramways, ropeways, inland waterways and traffic thereon subject to certain limitations are a State subject. The Union, while it cannot exercise any authority in relation to it directly, is empowered to direct any State to construct and maintain means of communication within that State which may be of military or national importance. This is without prejudice to the power of Parliament to declare highways or waterways to be national highways or national waterways, or of the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

The Union can also issue directions to a State as to the

1. Art. 257 (1)
2. Art. 257 (2)
3. Entry 18, List II.
4. Proviso to Art. 257 (2).
measures to be taken for the protection of the railways within the State. Railways are a Union subject. But 'police including railway police' is a State subject. The Union executive is therefore, empowered to direct a State to employ its police for the proper protection of railways and their property and to employ, if necessary, additional police force for that purpose.

The performance of all these duties specified in the directions issued by the Union, by the State will involve additional expenditure to the State exchequer. It would be unfair to impose duties on the State without making provision for meeting the expenditure involved in them. It is therefore provided that "where in carrying out any direction given to a State as to the construction or maintenance of any means of communication or as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State."

It is the duty of the States to comply with the directions given by the Union. No State can with impunity disown its constitutional responsibility in this respect. In the event of any State refusing to honour its obligation there is a direct sanction provided.

1. Art. 257 (3)
2. Entry 22, List I
3. Entry 2, List II.
4. Art. 257 (4)
The Constitution goes even beyond the Act of 1935 as regards the sanction behind the directions. Under the Act no penalty was provided for non-compliance by a Province with Central directions. But compliance was sought to be secured through the special responsibilities of the Governor. There being no such special responsibilities attached to the office of the Governor under our Constitution, provision has been made for a direct sanction. It is made perfectly clear that "where any State has failed to comply with, or give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution." The President can issue a proclamation of emergency in the State concerned and withdraw all powers of the Government of that State to the Union Centre. No State will be anxious to bring about a state of emergency leading to the suspension of the normal working of its constitutional machinery by disobeying the Union directions.

The Union Government can also delegate its executive powers to the Government and officers of any State either conditionally or unconditionally. The State concerned will be consulted and its consent taken in the matter before such delegation is made. Further, a law enacted by Parliament which applies in any State may confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the government of the State or its Officers. Parliament and the Union executive are empowered to use

1. Sec. 52 (1)
3. Art. 258 (1)
4. Art. 258 (2)
any State Government and its officers as agents of the Union. This
delegation is, however, subject to one condition, viz., that the
extra financial burden involved in the use of such agencies will be
paid by the Union Government.

The delegation of administrative duties by the Centre to one or
more of component units has indeed become inevitable in recent
times. The area of federal action is steadily expanding. The
centripetal tendency has gone on with increasing momentum. The
federal governments are finding it hard to cope with their in­
creasing administrative duties. Without the active co-operation
of the units the federal Centre cannot carry on its administrative
work. This is particularly the case in a vast country like India.
The functions of the Union are far in excess of those of the Units.
There are certain matters which cannot be administered by the Centre
single handed however efficient and extensive its administrative
organisation might be. For instance, 'Elections to Parliament, to
the Legislatures of States, and to the offices of President and Vice-
President, are a Union subject. It is impossible for the Union
without making use of the governments and officers of the States to
administer its laws relating to this subject. In the administration
of measures of social security the State governments will have to
play an active part. These measures have to be applied with due
derference to local and regional variations and only the State adminis-
trations which are familiar with the local needs and differences can
shoulder the task. The provision for administrative delegation is

1. Art. 258 (3)
2. Entry 72, List I.
a welcome feature of the administrative nexus between the Union and the States. It will help in the establishment of Cardinal relations between the two administrations. The States will also feel that their interests are not affected because full consultation with them will precede any such delegation and the extra cost which they will have to incur will be met by the Union Exchequer.

It is provided that the Government of the Union may with the consent of any territory outside India, undertake any executive, legislative or judicial functions vested in the Government of such territory. Such agreement shall be subject to, and governed by any law relating to the exercise of foreign jurisdiction for the time being in force.

It is also laid down that "full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State." The units in a federation being autonomous in their respective sphere, without a provision of this sort, the Acts, Records, etc., of one State would not be recognised by another. The present provision follows the practice that obtains in the United States and Australia. The substantive effects of such acts, records and proceedings will be determined by laws enacted by Parliament. "Final judgments or orders delivered or passed by Civil Courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law." This practice differs from the practice in the

1. Art. 260.
2. Art. 261 (1)
3. Art. IV, Sec. I.
4. Sec. 118.
5. Art. 261 (2)
6. Art. 261 (3)
U.S.A. Although in the United States one State will not question the validity of the judgments delivered in the courts of another State, such judgments are not readily executable. But in India, they can be readily executable in any State without requiring fresh action upon that judgment. This applies only to the judgments or orders passed by the Civil Courts only. The penal laws of one State are not enforceable in another, nor is one State expected to assist another State in the enforcement of its criminal law. Moreover, it is an accepted rule of the law of nations that the courts of one State will not aid in the enforcement of the criminal or penal law of another State. It is sought to apply this rule as between the Units of a Federal State.

A noteworthy feature of the administrative relations between the Union and the States is that provision has been made for the adjudication of disputes relating to waters of inter-state rivers or river-valleys and to bring about administrative coordination between States. Since the Units in every federation are independent in the exercise of their internal sovereignty, conflicts of interests between them are sure to arise. In the interests of the strength and stability of the Union these disputes must be amicably settled. There should therefore be adequate provision for judicial determination of disputes between the Units, for the settlement of disputes by extra-judicial bodies and for their prevention by consultation and joint action. The judicial determination of disputes belongs to the province of the Supreme Court which is vested with exclusive original and appellate jurisdiction. There are certain classes

1. Art. 131.
of disputes which are best resolved by an extra-judicial body. One such class of disputes is in regard to the use, distribution and control of the waters of, or in, any inter-State river or river valley. This class is excluded from the jurisdiction of the Supreme Court. Parliament is empowered to provide by law for the adjudication of such disputes. The word 'adjudication' used in this context suggests that the extra-judicial tribunal which may be set up by Parliament can exercise judicial powers and its jurisdiction in this respect will be determined by Parliament.

It is also proposed to establish a suitable machinery to prevent inter-State disputes by inquisitorial inquiry, investigations and recommendations. The body that is proposed to be set up for this purpose is an Inter-State Council. If it appears to the President at any time that public interests would be served by the establishment of an inter-State Council, he can by order establish such a Council. He can also define its organisation, procedure and the nature of the duties to be performed by it. It has, however, been charged with three specific duties: (a) inquiring into and advising upon disputes which may have arisen between States; (b) investigating and discussing subjects in which some or all of the States, have a common interest; or (c) making recommendations upon any such subject, and, in particular, recommendations for the better coordination of policy and action with respect to that subject.

The need for a body of this nature has been felt even in the United States whose Constitution makes no provision for it. But the Congress, in the exercise of its Commerce power, has created an

1. Art. 262.
2. Art. 263.
Inter-State Commerce Commission, by the Inter-State Commerce Act of 1887.

The Australian Constitution contains a provision for an Inter-State Commission. In fact, such a Commission was created in 1912 by the Inter-State Commission Act. The Commission was empowered to deal with complaints relating to the navigability of Inter-State rivers and fares charged in Inter-State traffic and the like. It was also declared to be a Court of record. But in 1915, the High Court of Australia held that the Commission was not a judicial tribunal and could not exercise judicial power, such as the granting of an injunction. In view of this decision the Commission was not reconstituted after its 7 year term expired in 1919 and since then Section 101 of the Constitution has remained a dead letter.

The Inter-State Council, if and when it is constituted in India will not function as a tribunal. It will not have any power to adjudicate disputes either. Its main function will be to prevent possible litigation. There are many disputes which can be easily solved by inquiry and suggestions as to their solution. This is what the Council will be asked to do. Its field of work will also be wide in as much as it covers 'any dispute'. Its existence will not in any way affect the jurisdiction of the Supreme Court.

The real work and usefulness of the Council lies in the discussion of subjects of common interest between the Union and the States or between two or more States inter Se. There are matters

1. Section 101.
like agriculture, education and public health in which all the States have a measure of common interest. These matters may be discussed in detail and suggestions as to the coordination of policies concerning them might be offered by the Council. It is particularly in this area that the chief work of the Council is centred. So far as Inter-State coordination is concerned the function of the Council is essentially complementary to Union legislation on inter-State matters by consent of the States concerned. The Council will be a useful instrument in coordinating research in important matters like public health, labour, forestry, agriculture, etc. Such a coordination by a statutory body will go a long way in helping the States to shape their policies in relation to those matters.

We have so far dealt with the administrative relations between the Centre and the States in normal times. In periods when a proclamation of emergency is in operation the whole Union is transformed into a Unitary State and the Union will exercise all powers, legislative, executive and administrative over the whole territory of India. The normal scheme of division of responsibilities will be suspended. The State governments will no doubt function but according to the directions of the Union and as the agencies of the Union. This is what will happen when a general proclamation of emergency is issued by the President. But when a proclamation of emergency is issued in any particular State, where a situation has arisen in which the administration cannot be carried on in accordance with the provisions of the Constitution, only that particular State is affected by the Proclamation. The Legislative and administrative powers are transferred to the Centre. The State Legislature is suspended and its place taken by Parliament. The
executive functions of the State will be exercised by the President through the Governor of that State and its officers. When a proclamation of emergency operates in any State, the Union becomes Unitary in relation to that State. The emergency provisions embodied in the Constitution make the Union supreme over the State in all respects.

The Constitution contemplates what is known as the period of transition. During this period the States in Part B will be subject to the general control and direction of the Union. The States in Part A are free from such Central control. "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 or 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." This provision was introduced having regard to the general backwardness of some States in Part B. Part B consists of some Unions of States formed as a result of the policy of integration and some advanced States like Mysore, Travancore-Cochin, etc. As the level of administration in these Unions is very low, it has to be appreciably raised before these Unions could be placed in Part A. It was also felt that there might not be any necessity to invoke this article in the case of Mysore or Travancore-Cochin. The proviso enables the President to direct that the provisions of this article shall not apply to any State specified in his order.

1. Art. 371.
Compared with the standard of administration in any Part A State, that of the Unions of States in Part B is backward in many respects. Referring to this matter, the late Sardar Patel in his Convocation Address at the University of Allahabad on November 27, 1949 observed: "...in many States even the rudiments of administrative machinery did not and do not exist; in a large number even local self-governing institutions were either conspicuous by their absence or still in a stage of infancy; popular organisations did not have such farflung roots as in the rest of the country. Almost overnight we have introduced in these States the superstructure of a modern system of government. The inspiration and stimulus has come from above rather than from below and unless the transplanted growth takes a healthy root in the soil, there would be a danger of collapse and chaos." The absence of well-organised and efficient district administration, of a competent secretariat, of regular budgets of income and expenditure was a feature characteristic of the territories included in the Unions of States - Unions of Saurashtra, Madhya Bharat, Patiala and East Punjab States and Rajasthan. It was found necessary that in the interests of the growth of democratic institutions in these States, no less than in the interests of administrative efficiency, the Government of India should exercise general supervision over the governments of these States till such time as it may be necessary.

The purpose of providing for such general supervision was to help the administrative progress of the States and to rescue them from chaos. Sardar Patel made it clear in the Constituent

1. White Paper on States, Par. 104.
Assembly that "the provision involves no censure of any Government. It merely provides for contingencies which, in view of the present conditions, are more likely to arise in Part B States than in the States or other categories. We do not wish to interfere with the day-to-day administration of any of the States. We are ourselves most anxious that the people of the States should learn by experience. This article is essentially in the nature of a safety-valve to obviate recourse to drastic remedies such as the provision for the breakdown of the Constitutional machinery." The wisdom of providing for Central supervision over these States can hardly be doubted. If the Centre has to assist the States in building up their administrative structure and in raising the level of administration in them there must be some constitutional sanction behind the Centre's power of supervision. It is provided in this Article. The period of transition may extend beyond 10 years. The task to be accomplished is immense and it is highly doubtful if it could be over within a brief period of 10 years. It may take double or even treble that time.

The expression 'general control' is so wide as to include all matters of politics and administration of a State. The directions of the State need not be confined to any particular matter. "There can be no doubt that till released from such tutelage or supervision of the President, the President has and can exercise not only general control but can give particular directions with respect to all or any of the matters coming within the ambit of the powers of B State executive, legislative or judicial, and there is

1. Ibid, Par. 241.
really no scope so long as the supervisory jurisdiction of the President lasts, for any of the States under such jurisdiction to deny President’s powers or defy his directions."

The procedure of exercising the supervisory functions is as follows: The actual organisation of the arrangement in individual Unions varies with their circumstances. The typical set-up, is on these lines: Senior Officers of administrative experience are appointed as Advisers to the Governments of the Unions. They will be in the service of the Union and attached to major departments of Law and Order, Revenue and Finance. They must be consulted in matters of all-India concern. All papers connected with these Departments have to pass through the Advisers who will also have the right to call for papers or information with which they are concerned. They can attend meetings of the Cabinet and explain their views but will have no right to vote on issues raised. Questions unresolved by the Cabinet may be referred to the Government of India.

Regional Commissioners have been sent by the Union Government to the Unions of States. The functions of such Commissioners are: to act as agents of the Government of India in such matters as food, civil supplies, extradition, issue of arms licences and passports etc. They can see any file or solicit any information, which in their opinion, is necessary for the Government of India to discharge their responsibilities of supervision and control. They also function as Advisers to the Rajpramukhs.

2. White Paper on States, Par. 213.
There might be prior scrutiny of legislative measures to be introduced in the Legislatures of the Unions by the Government of India. This is to ensure that such enactments are not repugnant to Central Legislation and Policy.

The financial and economic policy of the Unions must not conflict with that of the Government of India. The Government of India may scrutinise the budget estimates of the Unions before they are presented to the Legislatures and adopted by them.

The Government of India has a hold over key appointments in the Unions. The Chairman and Members of the Public Service Commission are appointed in consultation with the Government of India. The Government of India must also be consulted and their approval obtained in regard to appointments of Chief and Finance Secretaries and Inspectors-General of Police.

These are far reaching powers and their exercise will place the Unions of States under the complete control of the Government of India. These arrangements, say the Government of India, "are essentially in the nature of a transitional expedient; they should be viewed as a co-operative enterprise in which the ministries of the Unions must work together in a joint effort to promote the well-being of the Unions and the wider interests of the Country as a whole."

The Union Government has not only the power of general supervision and control over Part B States but can also issue directives in regard to any matter falling within the ambit of the

1. Ibid, Par. 214.
State's legislative, executive and judicial authority. Since the commencement of the Constitution only once has the Government of India issued a directive under article 371. In November, 1951, the President directed Government of the State of Mysore to take steps for the transfer of the case against Mr. L.S. Raju and others for the alleged attempt to murder Mr. P. Medappa, Chief Justice of Mysore, by administering poison, to a Court of Sessions in the State of Bombay or of Madras. The Government of India, as is made clear in the text of the directive, had earlier advised the State Government to transfer the case to a tribunal outside the State or to invite a Sessions Judge from outside the State to conduct the trial. As the State Government accepted neither course, the President was compelled to have recourse to article 371 and issue a directive to the State in the interests of justice. Subsequently the State Government accepted to invite a Sessions Judge from outside the State and requested the Union Government to withdraw the directive and exempt the State from the applicability of article 371 to Mysore State. The Union Government granted the exemption asked for subject to cancellation if circumstances warranted it and withdrew the directive.

It is felt in the States of Mysore and Travancore-Cochin that the application of Article 371 to them is not proper in view of the high traditions of administration they have built up. It is also urged that it introduces an invidious distinction between Part A and Part B States. Such an invidious distinction must

1. The Hindu, November 4, 1951.
2. Ibid, November 15, 1951.
certainly be regarded as an anomaly in the constitution and does not conduce to harmony in the body politic of the union. But, invicious as article 371 is, it must be realized that it is a transient expedient, likely to disappear at the end of a certain period. While some are urging the removal of that article, there are others who plead for its retention and extension or its applicability to Part A States as well. Mr. D.V. Gundappa who represents this line of thought urges the following arguments in support of his view: (1) The use of Article 371 is properly appreciated when it is regarded as a prophylactic compounded of the essential ingredients of Articles 256-257 (relating to the directions of the centre as to the exercise of the executive power of the States) and 355-356 (relating to the duty of the Union to protect the States against external invasion and domestic violence and breakdown of the constitutional machinery in the States) which apply to all States alike and are drastic in their operation. These latter provisions empower the Union centre (a) to give directions to any component State, 'A' or 'B' in matters within Union jurisdiction and (b) to take into its own hands the government of any State which has not been "carried on in accordance with the provisions of this Constitution. Before the adoption of the extreme measures thus authorised, Article 371 acts in the nature of a friendly warning. It sounds a note of caution when a State has set its feet on the wrong road. It has for its basis the notion that it is better to prevent wrong than to punish it and that it is kindlier to warn in time than to wait till the danger point is reached. (2) Party dispositions in the country are sure to change with the growing complexities in the nation's politics, - and it is not impossible that a political party other than the one which

1. The Hindu, November 21, 1951.
rules at the Centre comes to power in a certain 'A' State. In that event all cannot be smooth-sailing between the two ends; and Article 371 may then prove a welcome means of averting precipitate moves. But that Article will not be available for application to 'A' States until the Constitution is amended for the purpose and that must take time.

The entire scheme of distribution of powers in our Constitution has proceeded under the influence of two things: the prevalence in the country of fissiparous tendencies trying to undermine the foundations of national unity and freedom and the alignment of political forces at the time of framing the Constitution i.e. the same party ruling both at the Centre and in the States. Party dispositions are never permanent and when they change and different parties come to power at the Centre and in the States deadlocks might arise and the Constitution might not be able to withstand the shock and the burden of such changes. Some means will have to be contrived to save the Constitution from being wrecked. It is in this context that we have to appreciate the weight of Mr. D.V. Gundappa's plea for the extension of the provisions of Article 371 to Part A States as well. If, as is made clear, the Article is intended as a safety valve to obviate recourse to drastic remedies, there is no reason why it should not be made applicable to Part A States as well. The opposition to this Article is mainly based on a distrust of the intentions of the Government of India. It is based on fear of its possible misapplication. It must be realised that the article will not be used except when a dangerous situation develops in a State and when it has got to be averted. There is, therefore, a clear case for abolishing the invidious distinction that now subsists between Part B and Part A States by extending
the applicability of the article to Part A States as well. If it is urged that this will limit the larger autonomy that the A States now enjoy, it must be emphasized that the scheme of our Constitution is such that it envisages autonomy for the States in a strictly limited measure. It is too early to judge the value of article 371. Sufficient caselaw not yet developed around it. Perhaps when the working of the Constitution is reviewed a decade later, the real utility of article 371 would be established without doubt. Far from disappearing from the text of the Constitution, it might become its permanent and essential feature. Time will deliver the verdict. It may even turn out to be the yardstick by which the efficiency of the administrations of the States might be measured. The States might so run their administrations that they may render the Article a mere dead letter. The Article must be looked upon as a sign post pointing to the right direction and to the dangers that might lie ahead if that direction is abandoned.

ADMINISTRATIVE CONTROL

In the sphere of administration the control of the Union over the States is greater than in the legislative sphere. It is constitutionally binding upon the States to secure due respect for and compliance with the Union laws in force in them. It is again their constitutional duty to remove obstacles in the way of the exercise of the executive power of the Union. They have also to exercise their exclusive executive power in such a manner as not to impede or prejudice the exercise of the executive power of the Union. In both these respects, the Union reserves to itself the right to issue directions to the State as to how the State should conduct its administration. The Union can issue not only general
directions but also particular directions relating to specific matters such as the construction and maintenance of waterways or highways declared to be of national or military importance and the protection of the railways and their property. When directions are issued to a State, it has no alternative but to comply with them. The prospect of non-compliance is the declaration of an emergency in the State by the President and the consequent suspension of its normal administration. Thus the Union can not only shape the executive policy of the States but also lay down the manner in which that policy must be given effect to. It can do this even with regard to the field constitutionally reserved to the States. In the Concurrent field, the final control of the Union is established beyond doubt. The entire administration of a State is subject to regulation by the Union whenever it chooses to do so. The idea of the Centre issuing directions to the States is something repugnant to the spirit of the American Constitution. It is inconsistent with federalism and undermines the autonomy of the Units. The Framers of our Constitution have drawn the inspiration in this respect from the Government of India Act, 1935.

The whole scheme of administrative relations shows that the States in the Indian Union are subject to the control of the Union Centre and practically they are its subordinate administrative agencies. It emphasises the unitary aspect of our constitution. The States enjoy strictly limited autonomy even in normal times not to speak of emergencies when the whole constitution becomes completely Unitary. Even when an emergency arises in a particular State, the relation of the Union with that State will be Unitary.
In the transitional period the States in Part B are under stricter and greater control of the Union. As we have noticed earlier, the control of the Union over the administrations of the Unions of States in Part B is almost thorough and complete. It appoints Advisers who can control the Chief Minister and other ministers; Regional Commissioners who control certain vital policies of the Unions and the members and Chairman of public service commissions and the Inspectors-General of police in these Unions. It can control all the key-appointments. It can scrutinise the legislative measures to be enacted by the Unions. The budget estimates of the Unions are also subject to its scrutiny. The Union can effectively control the political and economic development of the Union of States. It is doubtful if the Paramount power in the heyday of the British rule in India exercised such rigorous control over the States as the Union Government now does over the Unions of States. The Unions are not only subject to general supervision and control of the Union but they have to comply with such directives as may be given by the President from time to time. States like Mysore and Travancore-Cochin whose administrative standards are comparable to those in Part A States are also under such control and obligation to comply with Presidential directives. The control of the Union over these States, will not be as thorough and deep as it is over the Unions of States.

Although such general supervision and control has, in the context of the circumstances that obtain in the Unions of States has every justification, some danger lurks in it. It has been said that the Paramount Power in India during the British rule effectively checked the forces of democracy and progress in the States and encouraged forces of reaction and conservatism in them.
It cannot be gainsaid that the forces of reaction and conservation are still strong in these Unions. The possibility of a political party ruling at the Centre trying to stabilise itself in these States through the instrumentality of the powers of the Centre over these States cannot be ignored. It is a possibility which deserves the serious attention of all students of political science and leaders of opinion. The operation of Article 371 may create "a new kind of paramountcy more authoritarian and more dangerous than the paramountcy in the days of the British." It may be hoped that healthy conventions will develop around the operation of this article and our apprehensions will be set at rest.

The Union Government has control over the personnel of the State administrations. Although both the Union and the States have their own public services, there is an All-India service common to both. The Indian Administrative Service and the Indian Police Service are the existing all-India Services. The members of these services are selected by the Union Public Service Commission. The conditions of recruitment, scales of pay, promotions etc., relating to these services are regulated by rules framed by the Union Parliament. Moreover, the members of the all-India services alone could be appointed to strategic administrative positions in the States. This means that the Union can effectively control the personnel of important departments in the States. This is yet another Unitary element in the federal structure contemplated in the Constitution.

Thus the autonomy of the States under the Constitution is hedged around with various limitations. The entire scheme sometimes produces the impression whether the prohibitive provisions embodied in the Constitution are not based upon a distrust of provincial autonomy. The power of the Union to issue directions to the States and to punish them for refusal to comply with them with the severe penalty of proclaiming a State of emergency in them and thereby taking over all the powers of the States to the Centre makes one feel that the relation of the Union with the States is that of a medieval Lord with his vassal.

Here again the theory of the Constitution might be one thing and its practice quite another. Political conventions and forces of public opinion may assert themselves in course of time and bring about cordial and co-operative relations between the Union and the States.

**ADMINISTRATIVE CO-OPERATION.**

It is in the area of administration that co-operation between the Centre and the Constituent States is most needed in a federation. In the highly interdependent and complex society of today with the expansion of governmental functions which has become inevitable efficiency and economy in government are not achieved by a division of powers between governments. Moreover, functions of government in the modern State cannot be sharply divided between Central and local authorities as can legislative power. Most functions of government are unitary in character but they are divided between governments. This makes their administration cumbersome and difficult. Administration gives expression to the Unity of governmental action and in a federation this unity
of action can only be achieved by close co-operation between the Centre and the Units.

Several devices have been employed in federations to bring about administrative co-operation and coordination between governments. The Constitution embodies quite a number of devices by which the necessary cooperation in administration may be ensured between the Union and States.

The provision for the delegation of administrative duties by the Union to the States, conditionally or unconditionally, but always with the consent of the latter is a co-operative device of great importance. The tendency of the federal government making use of the State agencies for the performance of its governmental functions has been on the increase. This tendency is at work even in the United States which is known for its 'dual federalism.' The Federal Government is using State services for putting into effect federal policies and programmes. This expedient is widely employed in the work connected with vital statistics, national public health service, national and State game laws and emergency relief work. The Federal Government also made active use of the State administrations for giving effect to its system of rationing, price control and air raid precaution during the Second World War. These arrangements have become more or less permanent even after the war. This tendency is likely to increase because the Federal Government is finding the local units extremely useful in performing

1. L.D. White, Introduction to the Study of Public Administration, Chapter X.
many of its functions expeditiously and with due regard for local and regional variations. In Switzerland, even to-day, the Cantons are administering federal measures to a large extent. The same tendency is seen at work in Australia and Canada also.

The Union Government in India is making great use of State Governments for giving effect to its measures. Both the Union and the States co-operate in maintaining common all-India services from which each can draw the personnel for its key departments.

Further, two or more States can by agreement have a joint Public Service Commission. On such agreement being expressed in resolutions adopted in the Legislatures of the States Parliament can by law provide for the establishment of a Joint Public Service Commission to serve the needs of those States. The Union Public Service Commission, if requested to do so by the Governor or Rajpramukh of a State, may with the President's approval agree to serve all or any of the needs of the State. In the selection of candidates to public services of the States the Union can extend to the States its hand of co-operation.

Again the Union can help the States to settle their disputes as to the control of the waters of inter-state rivers or of river-valleys. The Union can set up an extra-judicial tribunal to adjudicate upon such disputes. This will not only ensure inter-State comity but will also lead to the establishment of happy relations between the Union and the States.

1. Art. 315.
The one vital expedient which is of great importance in promoting cooperation between the Centre and the Units is the meeting of inter-governmental conferences, executives and officers. In the U.S.A., the Chief executives of regional and general governments meet in periodical conferences. For instance, the Governors' Conference has met almost every year since the inauguration of the Commonwealth. In Canada, the Dominion-Provincial Conference has met from time to time since 1906. There is also the Inter-Provincial Conference at which the Dominion participates only by invitation.

The Premiers' Conference in Australia has established a good record of work. It has achieved substantial measure of co-operation in the fields of aviation, health and constitutional reform. It works in close co-operation with another institution of co-operation - the Loan Council which gives effect to the decisions of the Premiers' Council in regard to financial matters. Both these bodies think almost alike on financial questions.

In Canada, of the two institutions of co-operation, viz., Inter-Provincial Conferences and Dominion-Provincial Conferences, the latter are of great significance. Between 1906 and 1945 there were ten conferences of the Dominion and Provinces. They have discussed Constitutional reform, financial relations between the Dominion and the Provinces, transport problems, unemployment relief, social services, agricultural marketing etc. Agreements were reached at some of these Conferences. The Rowell-Sirois Commission were so impressed with the utility of such Conferences from the point of view of Dominion-Provincial co-operation that they were of the opinion that "Dominion-Provincial Conferences at regular intervals with a permanent secretariat as suggested, would
conduce to the more efficient working of the Federal system."

In the United States, the Governors' Conference has so far not achieved a record of effective co-operation as great even as that of the Canadian Dominion-Provincial Conference. In the U.S.A., an institution of first importance in bringing about co-operation between the federal Centre and the States is the Council of State Governments. This institution was brought into existence first in 1937. It is representative of all the States. It serves as (a) a clearing house for information and research, (b) a medium for improving legislative and administrative practices of State Governments, (c) an instrumentality for encouraging co-operation among the States in the solution of inter-State problems both regional and national, and (d) a means of facilitating and improving federal-State relations. It publishes a monthly Journal "State Government" which reports and encourages inter-State co-operation and furnishes information about the Governors' Conference and the Conference of Commissioners on uniform State Laws. Associations like the American Legislators' Association, the Governors' Conference, National Association of Attorneys-General and the Commission on Uniform State Laws work in co-operation with this Council. The Council has played a useful role in improving federal-State relations on a co-operative basis.

In India, there is constitutional provision for the establishment of an Inter-State Council. The Council has been charged with

certain specific duties but the scope and nature of its work may be extended. The Inter-State Council when it is established will play a role similar to that of the American Council of State Governments. Its main work will be in the field of coordination of policies, research programmes and plans, of investigating the cause of inter-State disputes and offering suggestions for their settlement and promoting joint discussion and decisions on subjects of common interests. It is high time that the proposed Inter-State Council was brought into existence by the President. It must be established as a permanent organisation with a secretariat to assist it in its work. It will be a Central Bureau which can provide helpful suggestions and information on vital subjects to all governments. Its success will depend upon its organisation and procedure. Its composition must be such as to infuse confidence in the States as to its usefulness. It will be a potential medium of co-operative federal-State relations.

Co-operation in the federations is not confined to the periodical meetings of the representatives of the governments - general and regional - or of their executives only. Other ministers and permanent officials meet in conference from time to time and discuss common problems and their policies in relation to them. Ministers and administrators of health services - commonwealth and State - meet in Australia. Similar meetings are held by those who are responsible for the administration of agriculture, education, police, railways, etc. In Canada such co-operation is growing and the national Conference of Labour Administrators is an example of such co-operation. In the United States, there exist national organisation of officials engaged in administering a wide variety
of governmental activities and through regular meetings of these bodies co-operation is achieved. For example, there are the National Associations of Secretaries of State; of Commissioners, Secretaries and Departments of Agriculture; of Marketing Officials; of State Aviation Officials; of State Superintendents and Commissioners of Education; of Chief of Police and so on. These associations are mindful of their problems but their influence on administration has not been much. As Wheare observes "the impression that one obtains from a study of what have they achieved is that although they are aware of their problems and discuss them, they are relatively ineffective where action is needed." But the exchange of views and lines of action following such discussions is in itself a valuable means of co-operation.

In India too, Conferences between the representatives of the Union and of the States have been quite common and also frequent. There have been Conferences of the Governors and Rajpramukhs of States, of the Chief Ministers of States, of the Ministers and of permanent Secretaries to various Departments. The practice of the State governments soliciting the advice of the Union on various matters is also not uncommon. The Union Centre is also maintaining research institutions and Departments for collecting statistical information on a variety of matters. The States can utilise the results of the work of these bodies whenever they want. Within the framework of our Constitution there is vast scope for developing co-operation between the Union and the States. If these devices are properly used, federalism in India may develop along co-operative lines and it might be possible

to arrest the competition for power inherent in federalism. Such co-operation may also prove in certain matters an antidote to further Centralisation for as the Canadian Royal Commission have said: "The tendency in most federal States has been toward Centralisation at the expense of the provinces (or States). In so far as matters requiring uniformity of treatment, or concerted action can be dealt with by co-operation among the Provinces, or between the Dominion and the Provinces, the case for additional Centralisation to promote efficiency or uniformity will not arise."