CHAPTER V.

CENTRALISATION.

The process of transfer of governmental authority from a lower to a higher level of government is called Centralisation; the converse, decentralisation. The problem of centralisation vs. decentralisation arises in connexion with political organisation. The controversy between their advocates is as old as political organisation itself. It is present at all times. There will always be Statesmen, Legislators, Judges and Political Scientists who espouse the cause of one or the other. In the organisation of a federation the controversy assumes a vital importance. As a matter of fact the history of all existing federations is coloured by the presence, thought and action of the Centralists and the autonomists. In the context of modern economic and political conditions the controversy has assumed a fresh vigour.

In the abstract separated from concrete instances there is no more merit or demerit in centralisation than in decentralisation. The values and limitations of both are practical and can be understood in the light of their practical operation and consequences.

Generally speaking, decentralisation has the following merits; In the first place there is the advantage of the superior

1. White, Dp., Cit., P.45.
knowledge of local needs and keener interests possessed by the small groups that are directly affected. People must know most about the things closest to them. The residents of a city or a State are in a position to know more about their schools, roads, lights etc., that they know about foreign politics. Their knowledge of their needs can be naturally expected to be more intimate than the knowledge possessed by officials a hundred or a thousand miles away. Their interest is also keener. If they themselves are not interested in their affairs who else could be? Certainly not the distant officials.

The second benefit of decentralisation is that it fixes the responsibility upon those who are in a position to act upon local subjects. If local officials are not free to take action in connexion with local matters without the tedious necessity of securing consent or authority from a distant source, there is an incentive to inaction and an evasion of responsibility.

A third benefit is the opportunity frequently emphasized of experimentation in dealing with local problems in a locally devised way. It may afford suggestion and guidance to other local communities as a result of the success or failure of the experiment.

In fine, decentralization is essential to the practice of democracy. Democracy justifies itself not so much by efficiency of administration as by development of character in a participating citizenship. Something vital to the good life of a community is lost when the people abandon control to rulers at
a distance, however beneficient and wise the rulers might be. The citizen's obligations to the nation reveal themselves at distant intervals. His local obligations are more obvious. If he grows as a citizen, the growth is in connexion with his local responsibilities. The States are needed because they are the schools for living.

Decentralization, however, is not an unmixed blessing. It has many disadvantages which offset at least some of its advantages. There is first of all the danger of stagnation. If it is true that the growth must come from within it is no less true that stimulation and inspiration come not infrequently from without. The Community which leads an absolutely self-centred life, which is not subject to impulse and pressure from an external source is always slow to adopt improvements, to raise the level of its people, and to contribute in its own turn to the improvement of the larger community of which it forms a part.

Secondly, there is always present a danger that exclusive local management of local affairs may develop into a system of "log-rolling" between influential local interest, which results in the disregard of the general interests of the community. No local official could be sufficiently free from local entanglements, local pressures and local partisanship to be independent in applying and enforcing the law.

Lastly, where government is completely decentralised and
local units are exempt from the supervision and control of a Central authority, there have always tended to grow up bitter and unfruitful rivalries between such units which have in consequence expended their strength and wasted their resources in petty conflicts of greater or less intensity for unworthy objects of ambition instead of contributing to the progress of and well-being of their people. History bears out that this tendency displayed itself among the Greek City-States, and the feudal principalities of Medieval Europe.

It must be realised that modern economic and political conditions have underlined the disadvantages of decentralisation and accelerated the trend towards centralization. Generally speaking centralization has been rendered inevitable by four major factors. "They are war, economic depression, the growth of the social services and the mechanical revolution in transport and industry." Wars in modern times have global effects. Both war and economic depression require Unitary control if their problems are to be effectively dealt with. The financial strain imposed by these factors can be borne only by the Central Government. The growth of the social services has also tended to increase the powers of the Centre at the expense of the Units. Social services require central coordination and central financial assistance. The system of grants-in-aid by the Centre to the Units involves inevitably some degree of centralization. The revolution in transport and industry have transformed economic

1. Wheare, Op., Cit., P. 254.
organization into a highly complex system. In many matters of economic character, as a result of the growth of large-scale organization the small units have lost all importance. The Central Government has been forced to take over the control over a wide range of economic activity. In Federal countries, two special factors have added to the increase of the power of the Centre at the expense of the Units. They are the interpretation by the judiciary of the provisions of the constitution relating to the demarcation of the respective powers of the Centre and the Units. The judgments of the Federal Judiciary in almost all federations have tended to increase the power and authority of the federal Centre at the expense of the Units. The other factor is the receipt by the units of the federal financial assistance. The system of grants-in-aid has become a permanent feature of federal finance in almost all federations. Grants-in-aid have a centralising tendency particularly when they are made with 'strings' attached. The tendency towards centralization crosses even the constitutional barriers erected in a federation. It flows in and around the constitutional framework. This has been rendered possible in a federation by the judiciary and the process of constitutional amendment. In the U.S.A., the Supreme Court has played the most significant role in this respect. The same role in Australia and Switzerland is played by constitutional amendment.

The keynote of our constitution is centralization. Centralization under the constitution has been legislative or political, administrative and financial.

In the first place, a perusal of the division of powers
between the Centre and the States contained in three Lists shows unmistakably that the Centre has been given a wide range of jurisdiction and authority. The Union List contains 97 items, the State List 66 and the Concurrent List 47. It should, however, be noted that the mere number of subjects allotted to a particular government bears no relation whatever to its strength and influence. In the U.S.A., and Australia the Centre has been assigned very limited subjects. But who can doubt that the Centre in those two countries has been very strong. In the actual division of powers the principle generally accepted is that the federal government should exercise control over all matters of national and general importance and that the Units should exercise control over matters of provincial and local importance. It all sounds very well in theory. But it is difficult of practical application. It is only in a very few matters that it is possible to make a clear-cut distinction between strictly Central and strictly Provincial subjects. There are many which may equally be placed within the jurisdiction of either the Centre or the Units. Education, labour welfare, marriage, public health, marketing, transport and unemployment relief belong to this group. The distribution of powers in federal constitutions shows how several items included within the jurisdiction of the Centre in some federations are placed within the jurisdiction of the Units. This shows that there is room for difference of opinion in regard to the application of the general principle referred to. It is better to take an objective view in regard to the cry of centralisation.
We have to examine the various functions of government such as defence, communications, trade and commerce and the like and to decide which agency - Centre or the Units - could best handle the problem. Judged from this point of view the division of powers in the Indian Constitution appears to be sound and satisfactory. The powers that the Union Centre will exercise are necessary from the point of view of the exigencies of Indian situation. It cannot however be denied that the Indian Centre has been invested with greater powers than any other federal Centre.

It must be here emphasized that although the distribution of power is such that it has reserved vast powers to the Centre, the importance of the States has not been belittled. The States have control over many important subjects like land, including rights in and over land, land revenues, education, including university education; public health, hospitals and dispensaries; law and order; fisheries; agriculture and land revenue. These subjects are of vital character. They affect the citizen's life intimately and bring him into direct contact with the State Government. From the citizen's point of view they are more important than the problem of defence or foreign affairs which belong to the Province of the Centre.

The fact that the residuary powers have been lodged in the Union Centre also lends weight to the view that there has been Centralization in India. The general impression that the strength
depends on the residuary authority and that the balance of power will be in favour of that government in which that power is located, is not always correct. It has been shown that there is no connexion between the strength of a government and the location of residuary powers in it. In Australia and the United States the residuary powers are located in the Units but they have not prevented the Centre there from becoming more powerful. In Canada the location of the residuary powers in the Centre has not made it stronger to the extent it was anticipated by the Founding Fathers. As the Royal Commission on Australian Constitution remarked: "The choice between giving the specific or residuary powers to the Commonwealth Parliament does not itself determine the relative importance or extent of the two spheres. The question depends upon the nature and scope of specific powers." The same point is well brought out by Sir Robert Garran when he says "A residuary legatee is not necessarily better off than the donee of a specific bequest; it all depends on the amount of the bequest and the size of the estate. The experience of Australia goes to show that specific subject matters, if widely enough expressed, and if not subject to excessive qualifications, can be relied on as the basis for a strong Central government."

In the Indian Constitution the residuary powers remain in the Union Centre. Its importance is not much. Since all subjects of legislation have been exhaustively enumerated in

3. The Development of the Australian Constitution, Lectures printed in the Commonwealth Law Quarterly.
three Lists, the Union List, The State List and the Concurrent List, residue, for the time being, does not exist. If and when new subjects become known they will go to the Centre. Thus the residue in the Constitution will not add much power to the Centre.

As our study of the Union-State relations has shown Centralization is the key-note in the legislative or political, the administrative and the financial fields. In the legislative sphere the Centre has been entrusted with overriding legislative powers. Two important provisions are to be noted in this connexion. First, is the provision regarding the power of the Union Centre to legislate in order to give effect to treaties, agreements and conventions entered into by India with other countries. This provision enables the Centre to legislate on any State subject to the extent to which it concerns the treaty. The centralizing effect of the treaty-making power of the Centre is thus obvious. The Centre can transcend all limitations in regard to this power. Secondly, the power of the Union to legislate with the consent of the Council of States expressed by a resolution, of any State subject for one year at a time in the national interest, involves some degree of centralization.

In the field of administration the degree of centralization is greater. The Units have to perform several obligatory functions.

2. Art. 249.
They have to secure due respect for and compliance with the Union laws in force in them. They must not prejudice or impede the exercise of the executive power of the Union. The Union can issue directions to the State Government as to the manner in which the executive power of the latter must be exercised. The idea of issuing directions tends unmistakably in the direction of centralisation. Directions may be general or specific. They have to be obeyed by the States. The sanction behind them is the power of the President to proclaim an emergency in that State which refuses to comply with the directions of the Union.

Again there is provision for common all-India services which are under the control of the Union. The key-appointments in the States are to be filled up by members of the all-India service.

In the field of finance, the States are placed under the Centre. Most of the productive taxes are levied or levied and collected by the Union. The proceeds of some taxes are to be assigned to the Units wholly or in part. Income-tax is to be shared between the two, so also some excise duties levied by the Union. There is ample provision for grants-in-aid of the revenues of the States. Grants may be conditional or unconditional, obligatory or specific. No one can doubt the ultimate result of a system of grants-in-aid. In all the federations the Units are in an appreciable degree dependent upon the doles of the Centre. Invariably conditions are attached to grants. Through the grants-in-aid the Union can effectively interfere in the policy as well
as programmes of the States.

Other features which tend to strengthen the centralizing tendencies are: first, the appointment of the Governor of a State by the President gives the Union Government power to control the affairs of any State for the Governor being the nominee of the President has to function as the agent of the latter. Secondly, the President can Veto State legislation when it has been reserved by the Governor or the Rajpramukh.

Again, in regard to judicial administration the constitution envisages a single integrated system of judiciary for the whole country.

These features are operative in normal times. But in emergencies the Union Government will function as though it were a Unitary government. All the Units become its subordinate agencies as long as the proclamation of emergency remains in force.

Again, during the transition period the States in Part B are subject to greater control by the Union than the States in Part A. Part B States will be under the general control, direction and supervision of the Centre. They must also comply with such particular directions as may be given to them by the President. This means that Part B States are under the Unitary control of the Union.

Thus the entire constitution displays centralisation of powers. Some critics like Pandit Kunzru, have said that the constitution is over-centralized. Pandit Kunzru cites two articles in particular, viz., the article relating to the sanction
behind the direction, i.e. the power of the President to punish a State which refuses to obey his directives by proclaiming a State of emergency in that State and taking over all powers to the Centre; and the article relating to the suspension by the President of the scheme of distribution of revenues between the Units and the States when a proclamation of Financial Emergency is made. To quote his own words, "I feel that the Central Government has taken too much responsibility on itself and that the Constitution may, instead of making the State Governments realize their responsibility, will discourage them in performance of their task and make them feel that they are no more than agents of the Central Government. Such a feeling cannot promote the development of full responsibility nor can it stimulate the provincial electorates and the Legislatures to exercise the supervision that they should in a self-governing country."

There is some truth in the view of Pandit Kunzru. The provision relating to the suspension of the distribution of revenues between the Union and the States in emergencies due to the breakdown of the financial stability of India appears to be quite unnecessary in the light of the experience in other countries. The two articles cited by Pandit Kunzru do give the impression that the constitution is over centralized. But so long as they remain inoperative, Centralization will not lead to unhappy results. It cannot be doubted that the constitution offers opportunities for the Centre to take upon itself powers more than it

is necessary. This tendency must be checked else it will overwhelm the Centre as well as the States. In the words of Dr. Ambedkar, "some critics have said that the Centre is too strong. Others have said that it must be made stronger. The constitution has struck a balance. However, much you may deny powers to the Centre it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A., which, notwithstanding the very limited powers given to it by Constitution, has outgrown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight." Over centralization can be prevented by the assertion of vigilant public criticism and opinion in the Legislatures and in the press.

CHAPTER VI.

THE NATURE OF FEDERALISM IN INDIA.

We have in the earlier chapters examined the relations between the Union and the States. In this Chapter an attempt will be made to examine the nature of the federal polity contemplated under the Constitution.

A significant fact that strikes any student of the Constitution is the omission of the word federation from the text of the constitution although it answers to the traditional description of a federation. The Framers of the Constitution chose the word 'Union' instead of 'federation' to describe the form of association of States under the Constitution. India, under the terms of the Constitution, is 'a Union of States.' Explaining the reasons that prompted the Drafting Committee to use the word 'Union' Dr. Ambedkar said in the Constituent Assembly that the Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State had the right to secede from it. The Federation is a Union because it is indestructible.

The term Union by itself is not very suggestive. Its use

1. Article 1.
is not always \textit{in fact} uniform. It is found in the preamble of the United States Constitution which is regarded as the most perfect example of genuine federation. It is used in the preamble of the British North America Act which converted Canada into a federation which according to Lord Haldane is not a real federation. It is used even in the preamble to the Constitution of the Union of South Africa. The South African Constitution is predominantly unitary. The Framers of our Constitution could have chosen to describe India as a 'Federal Union' rather than as a mere 'Union of States'. It may, however, not be very appropriate to speak of India under the Constitution as a federation as there are many important unitary features. It is perhaps a realization of this fact that made the Fathers of the Constitution to rest content with the simple description of India as a Union of States.

It is interesting to note the manner in which the 'Union of States' has come into existence in India. Broadly speaking, there are two principal ways in which a federal Union might come into being. First, it may be the result of a voluntary agreement on the part of a number of States which are sovereign and independent. Second, a unitary state might convert itself into a federation by giving the provinces autonomy. The United States exemplifies the first and the Dominion of Canada the second. The thirteen American States which formed the American federation were fully autonomous and by a voluntary agreement they became federally united. In Canada, on the other hand, the Provinces never enjoyed any independence. The Act of federation was not voluntary. It was imposed by a British Statute which withdrew
from the Provinces all their former rights and then redvided them between the Dominion and the Provinces.

Until the Government of India Act 1935, is so far as it related to Provincial Autonomy, became operative in 1937, India had a unitary government. All the provinces were mere subordinate agencies of the Centre exercising a federation of India. The manner in which the federation was sought to be established was very similar to the manner in which Canada transformed into a federation, viz., by making the Units autonomous and combining them into a federation by one and the same Act. All powers, rights and jurisdiction in and over the territories of British India were resumed by the Crown and they were redistributed between the Central Government and the Provinces.

The Government of India Act was effective only partially. Only the Provincial Part of it was put into effect. The Provinces under the Act were not in any sense 'sovereign' like the States under the American Constitution. In the framing of the present Constitution the Provinces as Units had no part. It was hammered into shape by the representatives of the People of India assembled in their Constituent Assembly. Hence the Union of India is not the consequence of a compact among the component States. Under the Act, in the matter of joining the federation the Provinces had no option. But the Indian States were free to enter the federation or abstain from it. Under the Constitution this anomaly is done away with. With some minor exceptions both the former Indian States and the former Provinces are placed

1. Joint Committee on Indian Constitutional Reform, 1934, Par. 153.
under one and the same political system. The federal plan is thus uniform and not heterogenous as was the case under the Act.

Of the motives behind the act of federation, that of providing for protection against foreign aggression, has undoubtedly been the most powerful. It is the fear of aggression by an external agency that induces a body of independent States to protect themselves by forming themselves into a federation. As pointed out by Mr. B.G. Pher, "one feature that distinguishes our Federation is that, unlike the other countries which have a federation, it is not the fear of any aggression or any outside agency that has inspired us to federate. Our federation is the natural outcome of our unique struggle for freedom for years and years."

From the fact that the federation has not been the result of a voluntary agreement on the part of the federating States follows one important consequence. In the United States Federation was a free act of the component States. They drew up the constitution of the National Government leaving the States to remain their original constitutions. In Canada, on the other hand, the Constitution prescribed the Constitution not only of the National Government but also of the Provinces. This was also the case in South Africa. It is the case in India too. The Constitution of the Union and of the States form part of one and the same organic law. The only exception which is of a temporary character, is the exclusion of the State Jammu and Kashmir from the operation of this rule. The States of the Indian Union have no rights

or powers anterior to or apart from the Constitution.

An essential feature and requisite of a federal Union is the equality of the component States. Equality does not mean equality of States in respect of their geographical area, size of population or the extent of their economic and natural resources. Equality in any of these senses can never exist. In these matters the Units are bound to be diverse. Equality here implies equality of the Units under the Constitution. It means the equal representation of the Constituent Units in the Federal Upper House. The principle of equal representation of Units is one of the cardinal principles of the American Constitution. The American Constitution declares that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." Australia has adopted the American practice in this respect. In Canada the original Provinces are represented equally in the Senate but the newly added provinces are not equally represented. In India, as in Canada, there is no equality of representation for the States. The Fourth Schedule to the Constitution makes this evident. The Second Chamber in a federation is supposed to embody the federal principle viz., it is in every sense a chamber representing the Units and on a basis of equality. This principle is conspicuous by its absence in our country. The Council of States, (Upper House) is not strictly a Chamber representing only the Units. It includes in addition to the representatives of the Units members nominated by the President for their experience in or knowledge of science, public administration, etc. There

1. Art. V.  
2. Art. 80.
is in our Constitution no place for the principle of equality of States. This again, is the consequence of the federation not being the result of an agreement among the States.

The Constitution conforms itself to the traditional criteria of a federal constitution. It is written. It is rigid. It makes a distinction between laws ordinary and laws fundamental and prescribes a special procedure for amending the latter. It divides and distributes legislative, administrative and financial powers between the Union and the States. It also provides for the Supreme Court to interpret and guard the constitution. Thus the Constitution exhibits all the characteristics of a federation. It has all the marks and provides all the institutions of a federation. It is important to realise that what makes a constitution really federal is not the marks of federation that it exhibits but the extent to which it embodies the federal principle, for very often the form and spirit of a constitution do not coincide. This necessitates a discussion as to what the principle is.

The federal principle is best understood with reference to the American Constitution which according to the Historian Freeman represented "the most perfect development of the federal principle which the world has ever seen." The United States is a Federation. Its constitution divides the entire field of government between the national and regional governments which are not

subordinate one to another, but coordinate with each other. In the words of S.J. Morison: "The general government is a government supreme in its sphere, but that sphere is defined and limited. As the tenth amendment made clear in 1791, 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively or to the People.' The States are coequally supreme within their sphere; in no legal sense are they subordinate corporations." The Principle underlying the United States Constitution is thus clear. It is principle of the division of governmental powers between distinct and coordinate governments. It is this principle that distinguishes the United States Constitution so significantly and is characterised as the federal principle. A telling definition of a federation is given by Sir Robert Garran. He defines it as "A form of government in which sovereignty or political power is divided between the Central and local governments, so that each of them within its own sphere is independent of the other." An equally telling definition is by W.C. Whear. He says: "By the federal principle I mean the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent."

There seems to be some difference of opinion among writers on political science on the definition of a federation. Some writers think that the division of powers must follow a particular

pattern, viz., the powers of the general government are to be specified and the residue left to the regional authorities. By this test U.S.A., alone will be entitled to be designated as a federation. This test is really unsound. There is no sanctity in any particular way of dividing governmental powers. What is necessary is that the division of powers leaves the federal and regional authorities independent of and coordinate with each other. As Sir Robert Garran points out, "The distribution of powers between the local and central governments may vary to any extent; but that the fundamental idea is always that of the two-fold sovereignty and the independence of each government within its own sphere."

The Lord Holdane federation meant something peculiar. To quote his own words: "In a lose sense the word 'Federal' may be used..........to describe any agreement under which self contained States agree to delegate their powers to a common government with a view to entirely new constitutions even of themselves. But the natural and literal interpretation of the word confines its application to cases in which these states agreeing on a measure of delegation, yet in the main, continue to preserve their original constitutions." The British North America Act 1867 did not create a real federation in that it laid down the constitutional framework of both Central and Provincial governments. Only America and Australia could be described as

real federation according to this test. The change in the original constitution of the federating units has really no relevance to the federal principle. The view of Holdane is utterly strange and unrelated to reason.

It is sometimes held that the true mark of a federation lies in the Central and regional governments acting directly upon the citizens. While such a test might help to distinguish a federation from a confederation, it is doubtful if it can serve to distinguish between a federation and highly decentralized unitary government. South African Union is an instance in point. There the Centre and the provinces operate on the people directly in much the same manner as do the Centre and Units in a federation. But in South Africa the provinces are subordinate to the Centre. In a real federation both the Centre and the Units are coordinate. The true test of a federation is the principle of division of powers between two sets of independent and co-ordinate authorities.

Before we set about the task of examining the extent to which our Constitution embodies the federal principle as determined above, it is necessary to distinguish between two sets of expression viz., "Federal Constitutions" and "Quasi-Federal Constitutions:" and "Federal Constitution" and "Federal Government."

An examination of the leading federations of the World shows that with the exception of the Constitution of the United States in no other constitution is the federal principle in
operation in the true sense of the term. In Australia, Canada and Switzerland the federal principle has been modified in many ways. In the constitution of Weimar German Republic and the U.S.S.R. the federal principle is practically twisted out of shape and strained too far. It has, however, not been destroyed completely. Thus the term 'federal' has come to be applied to a number of constitutions widely differing in the relations of the States and the Central governments. A distinction is therefore made between what are called federal constitutions and quasi-federal constitutions. In the former the federal principle is predominant; in the latter although it is important, it is not predominant.

A constitution may be federal in structure but it is no guarantee that it will be so in practice. Although a country might have a completely federal constitution its government may not be federal. In this connection Wheare introduces a useful distinction between federal constitution and federal government. He explains the distinction in theory and practice as follows: "The law of the constitution is one thing; the practice is another......Legal powers which might turn Canada into a Unitary State have been subordinated to the federal principle in practice.... The fact is Canada is politically federal and that no Dominion government which attempted to stress the unitary elements would survive.......Although the Canadian Constitution is quasi-federal in law, it is predominantly federal in practice. Or, to put it in another way although Canada has not a federal Constitution, it has a federal government." Thus the practice of the constituting

constitution is more important than the law of the Constitution.

We may now examine the constitution of India in the light of the federal principle defined above.

The Constitution distributes the governmental powers between the Union and the States. It has enumerated the powers of the Union and the States in three exhaustive lists and leaves the residue with the Union. But the federal structure is so devised that the Government of the Union can with constitutional propriety intrude into the sphere reserved for the States and thus modify the general rule of independence.

There are many provisions in the constitution which enable the Union Government to control the activity of the States. These tend to transform the federal structure into a Unitary structure. We may briefly examine these provisions.

In the first place, among the provisions which enable the Union to impinge upon the autonomy of the States the first to deserve our attention is that which provides for the appointment of Governors of Part A States. The Governors of Part A States are to be appointed by the President. The Governors will hold office during the pleasure of the President. The implications of these two articles are clear. The Governor will be the nominee of the President, and therefore, the nominee of the dominant political party ruling at the Centre. The Governor can be dismissed even during his normal term on grounds which may well be

1. Art. 155.
2. Art. 156.
political. The effect of these provisions is to make the Governor an agent of the President and therefore of the Centre. The Governor under the constitution exercises certain discretionary powers. These enable him to play the role of the Union agent effectively. The nature and scope of the discretionary powers are nowhere defined in the constitution. The Governor is empowered to curtail the powers of the State Legislature. He can reserve the bills for the consideration of the President. The practice of the Union Government appointing the Governors of the States and recognising the Rajpramukhs of Part B States as Rajpramukhs follows the Canadian practice. In Canada, the Lieutenant-Governors of the Provinces are appointed by the Dominion Government.

Secondly, in the sphere of administration the States are under the control of the Union. The executive power of the State must be so exercised as not to impede or prejudice the exercise of the executive power of the Union. It must also secure due compliance with the Union Laws prevailing in the State. The States must also comply with such directions as may be given to them by the President from time to time. The power to issue directions to the Unit is inconsistent with the federal principle and is repugnant to the Constitution in the United States. These directions have to be obeyed by the State. The alternative to disobedience is the suspension of constitutional machinery in the State. There is also no clear cut bifurcation in the

1. Art. 163 (1)
4. Art. 257.
5. Art. 365.
administration of the Union and State laws. The State officials will administer in many cases the State laws as well as the Union laws. Although both the Union and States have their public services there are certain All-India services whose members will have to be appointed to strategic positions in the States. The organisation, recruitment, conditions of service etc., are regulated by the Union Parliament.

Thirdly, the legislative independence of the States is also limited by the powers of the Union Government. Legislative enactments of vital importance are to be reserved for the consideration of the President. This means the President can veto these measures. The Central disallowance of provincial legislation is a prominent feature of Dominion-Provincial relations in Canada. This precedent is imported into our constitution. It is repugnant to the federal principle. Again the Union can by a unilateral action modify the distribution of legislative powers. With the consent of 2/3 of the members of the Council of States, Parliament can legislate on any item in the State List for a temporary period of one year at a time. The Council of States must indicate by a resolution that such legislation by the Union on a State subject is desirable in the 'national interest'. Although the Council of States consists of the representatives of the States, it is not based upon the federal principle of equality of State representation.

1. Art. 312
2. Art. 249.
Fourthly, in the administration of justice the Constitution is unitary. It envisages a single integrated system of judicial administration for the whole of India. In the U.S.A., there is the dual system of Courts. The Federal Courts administer federal laws and the State Courts administer State Laws. The Dual Judiciary embodies the federal principle of independence of the two sets of governments. In this respect too, India makes a departure from the U.S. model. The Canadian precedent is again preferred. Both the Supreme Court and the High Courts are under the jurisdiction of the Union. The same system of integrated judiciary has jurisdiction over and provides remedies in all cases arising under the constitutional, the civil or the criminal law. The organisation and structure of the High Courts in the States is in the hands of the Union. It is the President that fixes the number of judges in each of the High Courts. It is again the President that appoints the Judges. Judges of High Courts are removable only by order of the President and the recommendation for such removal must come not from the Legislature of the State but from the Union Parliament. Nothing illustrates better the tendency towards unitarism in the constitution than the provisions relating to the judiciary.

There are two other matters, which also indicate the Unitary aspect of the constitution, to which a reference can be made here. The first is the provision for a single all-India

1. Entries 77-78, List I.
2. Art. 216.
3. Art. 217.
Citizenship. The recognition of a dual citizenship is often regarded as an essential mark of a federation. In the United States dual citizenship prevails. Every citizen has two citizenships; national and local. Although duality of citizenship is consistent with the dual polity that is a federation, it may in moments of crises lead to a conflict of loyalties in the minds of the citizens. Is there any inconsistency between local and national citizenship? If so, which one should be subordinated to the other? These are questions which the ordinary citizen may not be able to decide for himself. In order to emphasize the unity of the nation and the idea of a single loyalty, the constitution provides for only one citizenship, the citizenship of India. Further, it is the Union Parliament that determines who a citizen is and every citizen automatically becomes a citizen of his particular state as well. More important than the provision of a single citizenship is the complete unionisation of the electoral machinery. "The superintendence, direction, and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decisions of doubts and disputes arising out of or in connexion with elections to Parliament and to the Legislatures of States shall be vested

1. Art. 5.
in a Commission (referred to in this Constitution as the Election Commission); Again, Parliament is empowered to make provision with respect to all matters relating to all matters pertaining to elections to either House of the State Legislature and to the delimitation of the Constituencies. Thus the Union Parliament has complete control over the actual composition and character of the State Legislatures.

These are provisions which will be operative during normal times. The Constitution also makes provisions for dealing with emergencies. The Constitution envisages three types of emergencies, viz., (1) a general emergency when the security of the Union is threatened by war, or external aggression, or internal disturbance; (2) a financial emergency, when the financial stability or the credit of India or any part thereof is threatened; and (3) the breakdown of the machinery of administration in any State. The effects of the first type is to transform the whole of India into a Unitary State by the Union taking all the State Powers to itself for the duration of the emergency. It amounts to the suspension of the entire constitution. In the case of financial emergency the President can issue direction to State Governments to observe such canons of financial propriety as may be specified in the directions. He may also suspend the entire structure of distribution of revenues. In the last case, only the State affected will be under the complete control of the Union Government. In this case the constitution becomes partially

1. Art. 324.
2. Art. 327.
3. Arts. 352-360.
Unitary. The general effects of the emergency provisions are explained by Dr. Ambedkar as follows: "Once the President issues a Proclamation which he is authorised to do...... the whole scene can become transformed and the State becomes a Unitary State..... Such a power of converting itself into a Unitary State no federal- tion possesses."

During what is known in the Constitution as the transitional period, the States in Part B are subject to the control, superintendence and direction of the Union Government. The control of the Union extends to all spheres of State activity, legislative, executive and judicial. Hence during the period of transition the Union of India will function somewhat like a Unitary State in relation to Part B States.

Thus federation in India is unlike that in the United States. There are many deviations from the rigid and orthodox federal principle. The Indian Constitution cannot be said to be a federal constitution in the rigid sense. It is not a full blown federation. It is quasi-federal. The principle of federalism is present. It is prominent but not predominant. It is quasi-federal with a strong Unitary basis.

The new Constitution represents a deviation from the orthodox federal pattern embodied in the Constitution of the United States. The reason for this deviation is to be found in the history of India and in the circumstances under which the Constitution was

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framed. In the United States, the federal Constitution was the result of an attempt on the part of pre-existing autonomous States to federate for certain common purposes. The autonomous States naturally entrusted to the general government only such powers as were considered absolutely essential for the attainment of the purposes for which they thought fit to federate. In India, the federation is an artificial creation. The federation is not the result of the coming together of autonomous units already in existence. The Units of the Indian federation were not autonomous. The federal constitution was imposed upon certain Units. Although certain Units (the Indian States) were free either to join or not to join the federation the compulsion of geographic and economic factors left them with no choice but to join the federation. Moreover, the history of India has established that India never had a strong and unified rule except under the rule of the British. The lesson of history is clear. The progress and prosperity of India is closely associated with the existence of a strong Central Government capable of keeping centrifugal forces in check and ensuring law and order throughout the country. The Constitution took its birth under extraordinary circumstances and during a period when country was passing through a crisis and was overwhelmed with mighty problems. The partition set in motion forces of disorder. The country was faced with shortage of food and in many parts famine conditions prevailed. Added to this the problem of refugees was such as to test the mettle of even a well established system of administration. Partition also emphasized the importance of border problems and the
creation of an efficient system of defence. There was the problem of post-war reconstruction and planning which involves central direction, control and coordination. In view of all these considerations the framers of the constitution did not favour an undiluted federal form of government for the country. One outstanding consideration was to make the Central government strong enough to resist fissiparous tendencies and keep law and order without which progress is impossible. But in their anxiety to have a strong Centre they were not unaware of the dangers of a completely centralized State in India. They realized that a Unitary State would be a retrograde step and that a completely federal constitution would not impart the required strength to the Centre. They sought a via media. They accepted the federal structure as the appropriate one for the country but modified the federal principle in such a way as to invest the Centre with special powers.

It is not India alone that has deviated from the rigid federal principle. Even in the older federations the tendency to deviate from the orthodox principle of federalism is predominant. In all the federations the boundaries of federalism are shifting. The federal-State relations as originally laid down in the Constitution have changed. The changes have been brought about over years by judicial interpretation and amendments. The shift has invariably been in favour of the federal Centre. As a result of the industrial revolution, the revolution in transport and communications economic life has become integrated. The idea of the welfare state which involves a great deal of State planning has come to stay. The Central government has come to
exercise a great deal of power over economic matters. Economic depression, the two World Wars and the greater dependence of the Units on federal subsidies have added more powers to the Centre in all federations than their architects dreamt of. In the United States the federal government has become powerful through the exercise of its commerce power over years. As Swisjjer remarks, "the normal development of industrialization in the United States, the depression, and the current war have given rise to the exercise of power by our so-called federal government which was undreamt of even a decade and half ago." The Units in the United States have been unable to resist the seductive appeal of federal supervision of State policy. One of the direct results of grants-in-aid is that the federal government becomes in many matters the architect of the policy administered by the States.

In the Commonwealth of Australia and the Dominion of Canada too, the federal government has widened its sphere of influence and authority. Referring to the area of federal-State relations in Australia Thomas Playford observes, "this profess of building up Central Powers at the expense of local governments has gone beyond anything contemplated by those who created the federation. It has gone to such an extent that the States though still as a matter of law sovereign bodies within their appointed sphere, have, in fact, become subservient to the commonwealth. The organisation which the State created is now devouring them. Australia is in

the process of ceasing to be a federation of independent groups of people, and is being changed into a Unitary State." In Switzerland, whose countrymen have always nursed a strong sentiment of local autonomy, the federal government is consolidating its position. "The truth is that for a long time now an apparently irresistible current has been crying the country more and more rapidly towards the centralized national State."

The growth of federal power at the expense of the Units is clearly reflected in matters of finance. In all the federations the States have been forced to vacate the field of direct taxation. In the U.S.A., the federal government through a system of tax credit has induced the State not to compete with it. In Australia the Commonwealth Government by a series of Four Acts passed in 1942 has gained control over income-tax. Similarly in Canada and in Switzerland, the federal government has entered the field of direct taxation. The result is that the Units are becoming subservient to the Centre in financial matters. The system of grants-in-aid has now become a permanent feature of federal finance in all federations. It is a well-known axiom that "he who pays the piper calls the tune." The effect of grants-in-aid has been to place the Units in a position of subordination to the federal government.

Thus there has come about in all federations a tremendous concentration of power at the centre. Powers of government are

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1. Federalism in Australia (a symposium by Australian Institute of Political Science), 1949, P. 69.
becoming centralized. In matters of administration, however, an increasing use is being made of the State administrative machinery by the Centre. But the State administration of federal laws has always been subject to some degree of federal supervision and control. It is highly dubious that there can be decentralization of administration of federal affairs without federal direction and control. If powers become centralized so does administration, and perhaps, in an increasing degree. To hope for the contrary would be to entertain a pious wish.

Thus there has been a considerable deviation from the strict federal principle postulated in the beginning of this chapter, in all the existing federations. Even in the United States which is supposed to embody the true federal principle, the recent developments have considerably modified that principle in practice. There is, however, no particular sanctity in any particular form of federation. Federalism need not necessarily be of a standard type. "It has to be remembered that the whole concept of federalism in the modern world is undergoing a transformation. As a result of the impact of social and economic forces, rapid means of communication and the necessarily close relation between the different Units in matters of trade and industry, federal ideas themselves are undergoing transformation in the modern world." As Bryce remarks, "the true value of a political contrivance lies not in its ingenuity, but in its adaptation to the temper and circumstances of the people for whom it is designed." Political institutions

are always relative to the needs of a country. In this connexion, Where observes, very pertinently indeed, "federal government is not always and everywhere good government. It is only at the most a means to good government, not a good in itself. While I have maintained that it is necessary to define the federal principle dogmatically, I do not maintain that it is necessary to apply it religiously. The choice before those who are framing a government for a group of States or Communities must not be presumed to be one between completely federal government and completely non-federal government. They are at liberty to use the federal principle in such a manner and to such a degree as they think appropriate to the circumstances. Strict federalism in a few matters or modified federalism in all matters or any other variation in the application may be the wise solution to a particular problem. Whether federal government should be adopted at all, and if so, to what extent, are questions the answer to which depends on the circumstances of the case."

Each country is free to use the federal principle according to its circumstances and with such modifications as are desirable in its interests. It has been said of federalism in Canada that it is of a special nature. It may also be said of federalism in India that it is of a special variety. It is desirable to examine the special nature of federalism in India in this context.

Federalism in India under the Constitution exhibits some special characteristics which mark it off from other federations.

Federalism is said to suffer from two defects, rigidity and legalism as Dicey has pointed out in his Law of the Constitution. A federal Constitution has necessarily to be rigid a rigid constitution. Rigidity implies a static condition. The division of powers between the Centre and the State in a federation is constitutionally determined. The division is rigidly adhered to. Any Federal government or vice versa is a breach of the Constitution. As conflicts of jurisdiction are justiciable matters they are to be determined by the Federal Judiciary. Federation thus implies legalism. Rigidity and legalism are a real hindrance to the successful functioning of a federation. In Australia some attempts have been made to reduce the evils of rigidity and legalism. The devices adopted for this purpose are: (1) the constitution has conferred upon the Commonwealth Parliament large powers of concurrent legislation and few powers of exclusive legislation, and (2) certain articles of the Constitution are of a temporary duration remaining in force only "Until Parliament otherwise provides." These provisions have enabled the Commonwealth Government to do many things which do not fall within the competence of the American Government.

In our Constitution too, the Australian practice has been followed. There is a longer list of concurrent powers. There are 47 subjects in the Concurrent List as against 39 in Australia.

2. Sect. 51-52.
There are also a number of articles which are of a temporary nature and which could be replaced by Parliament at any time by suitable provisions. As for the exclusive powers India leads all other federations. The jurisdiction of the Union extends to as many as 97 subjects of legislation.

In the matter of reducing the rigors of legalism and rigidity our Constitution has broken new ways. These are special to Indian federalism and are not found in any other. In normal times Parliament can legislate on exclusively provincial subjects. With the consent of the 2/3 majority of the members of the Council of States Parliament can legislate on State subjects in the national interest. Again with the consent of two or more States Parliament can legislate on a matter in the State List for the benefit of the consenting States. This provision finds a place in the Australian Constitution but the first one is peculiar to India. Again in emergencies Parliament can legislate on any State subject. This is also special to India.

Again the process of constitutional amendment is made simple and comparatively easy. This again tends to reduce the rigidity inherent in federalism. There are two more groups of provisions in the Constitution which deal with constitutional amendment. The first group consists of articles relating to the distribution of legislative powers between the Centre and the States, the representations of States in Parliament, and the powers of the Courts. All other articles are in the second group. The amendment of articles in the second group requires a double majority i.e., a majority of not less than two-thirds of the members of each
House of Parliament present and voting and a majority of the
total membership of each House. No ratification by the State
Legislatures is necessary. The provisions of the first group
require, in addition, ratification by the States. Federations
are general and rigid but the Indian federation will be a flexible
federation. This flexibility is a great advantage to the success­
ful functioning of the Constitution. The federation will be
flexible not only in normal times but will be more so in times
when a proclamation of emergency is in operation. It transforms
itself into a completely Unitary State. In the words of Dr.
Ambedkar, "In normal times it (the constitution) is framed to
work as a federal system. But in times of war it is designed
to make it work as though it was a Unitary system." This ad­
vantage which follows from the combination of federal and unitary
principles no other federation possesses.

The dual polity inherent in a federation, although indis­
pensable up to a point, is capable of producing chaos where it
is stretched beyond a point. Dual polity means duality of laws
and diversity in administration. Diversity is good and necessary
up to a point because local variations and needs have to be acco­
mmodated. But diversity in certain matters is not desirable.
It may indeed be harmful. The Constitution has forged means
whereby India will have a federation but at the same time will
also be able to maintain uniformity in all basic matters which
are essential to the preservation of national unity and strength.

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It has qualified the Dual Polity by the introduction of three devices: viz., (1) a single integrated judiciary dealing with cases arising under constitutional, civil and criminal laws; (2) an uniform civil and criminal laws throughout India and (3) a common all-India civil service to man all important and strategic posts.

Federalism in India is provided with a strong and unmistakable unitary basis. At the same time the federal principle is also given a prominent if not a predominant place. It is too early to say whether the federal principle will triumph over the unitary elements or whether the unitary elements will become strong and oust the federal principle. In a large country like India whose people are diverse in language, religion, customs and habits there is real need for a federal government. The federal principle must be preserved at all costs. The Unitary elements are strong but they must be prevented from destroying the federal principle. This danger can be averted only by an educated electorate functioning through an alert and an instructive Legislature and a watchful judiciary, careful alike to preserve individual and organisational freedom. As we have already noted the theory of the constitution may be one thing and the practice of it quite another. Just as in Canada the Government in India if not the constitution, can function as a federal government. Much depends upon the growth of constitutional conventions and the role that the judiciary is likely to play in interpreting the constitution. More than anything else, the defence of federalism,
like the defence of peace, must be constructed in the minds of the Citizens. The preservation of the federal principle depends to a great degree upon the zeal with which the people in a federation value and nurse the federal sentiment.