CHAPTER X

Parliament

Unity through Popular Government

The predominant aim of the Constituent Assembly members when framing the legislative provisions of the constitution, was to create a basis for the social and political unity of the country. They chose to do this by welding the diversified Indian elements and interests into one mass electorate having universal, adult suffrage and by providing for the direct representation of the voters in the popular assemblies. This bold step completely overturned the constitutional pattern left by the British rule. The Executive and Judicial provisions of the Government of India Act, 1935, were adapted to India's needs by the Assembly with some major changes of substance, but with few of form. It was not so with the legislative provisions. These had to be entirely remade to incorporate the aims and objectives the nation had set before it.

Under the Act of 1935, not only did the Provinces lack even a semblance of popular government, but the small electorate that existed was thoroughly fragmented. The franchise was restricted by property, educational and other qualifications to near about 15 per cent of the entire population and this narrow electorate was split into not less than thirteen communal and functional sectors for whose representation seats were reserved, and that too with weightage in many cases, in the various legislative bodies. Election to the Lower Chamber of the Central Assembly was indirect on the basis of communal and functional electorates consisting of the members of the Provincial Assemblies. Evidently, the members of the Constituent Assembly could not hope to succeed in their mission to achieve national unity and stability "by perpetuating a system of government that accentuated existing cleavages in Indian society and tended to create new ones."[1]

In their efforts to remove all such cankers from the body politic of the country the Assembly members decided to provide universal adult franchise and joint electorates, by replacing communal electorate. There was to be neither weightage of representation for minorities nor reservation of seats, except for Scheduled Castes and Backward Tribes and that, too, for a short period.[2] The Lower Chambers, both at the Centre and in the States, were to be directly elected by adult suffrage. Only the Upper Chambers, at both levels, were to be, in part, indirectly elected. The members of the Council of States (Rajya Sabha) were to be elected by the members of the State Assemblies whereas the Legislative Councils, except for those nominated,[3] were to be elected from territorial constituencies by special electorates of the members of municipal, district and other forms of local government, of the university graduates and of teachers in Higher Secondary Schools. The restrictions on the powers of the Legislatures, as under the 1935 Act, were removed and all powers exercised by parliamentary bodies in federal representative democracies were given.

Parliament not a Sovereign Body

Parliament is the name given by the Constitution to the Union Legislature and it consists of the President and two Houses known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). The President is a constituent part of Parliament just as the Monarch is in Britain. But the American President is not a constituent part of Congress. The Constitution of the United States provides, "All legislative powers herein granted shall be vested

1. Granville Austin, *The Indian Constitution : Cornerstone of a Nation*, p. 145.
2. Seats were reserved for Scheduled Castes and Tribes for ten years from the commencement of the Constitution in the Lower Houses of the State Assemblies and in the House of the People (Lok Sabha). The President was empowered (likewise State Governors) to nominate not more than two Anglo-Indians to the Lower House if he believed that the community was not sufficiently represented. This provision has five times been extended and appears to have become retrenched in the system. It is reservation *par excellence*.
3. In Upper Houses there were also to be (12) members nominated by the President, and a Governor (one-sixth of the total membership of the Upper House) with special qualifications in the fields of literature, science, art, co-operative movement and social service.

in the Congress of the United States, which shall consist of a Senate and a House of Representatives."

Though the Constitution of India adopts the language of Britain in describing its Legislature at the Centre, and makes the President, like the Monarch of that country, a constituent part of Parliament, yet the Indian Parliament is not sovereign Legislature like the British Parliament. It functions within the bounds of a written Constitution setting up a federal polity and a Supreme Court invested with the power of judicial review. The legislative competence of Parliament is limited, during normal times, to the subjects enumerated in the Union List and the Concurrent List in the Seventh Schedule of the Constitution. Besides, its supremacy within its own sphere of jurisdiction is limited by the Fundamental Rights guaranteed to the citizens in Part III of the Constitution. Article 13 Clause (2) prohibits, subject to specified restriction, the State from making any law which would take away or abridge any of the Fundamental Rights. Where the State makes a law in contravention of the Fundamental Rights, that law shall, to the extent of contravention, be void.

In Britain no formal distinction is made between constitutional and other laws and the same body, Parliament, can change or abrogate any law whatsoever and by the same procedure. The Constitution of India, on the other hand, makes a distinction between statutory law and constitutional law and prescribes a special procedure for amending the latter as incorporated in Article 368. The Supreme Court held in *Keshavananda Bharati* v. *The State of Kerala* that Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution. The term basic structure is a vague and general term and the Judges themselves did not offer a common agreed meaning. Some included Fundamental Rights and federation in the concept of basic structure while others saw no limit to the amending power of Parliament. The Constitution (Forty-second Amendment) Act 1976, provided that Parliament had full power to amend the Constitution and no Amendment made under article 368 could be questioned in any Court on any ground. The validity of the Forty-second Amendment was questioned and in May 1980 the Supreme Court struck down in the *Minerva Mills* case Section 55 of the Amendment incorporated in Clauses (4) and (5) of Article 368 as it altered or destroyed the basic structure or framework of the Constitution. It was affirmation of the *Keshavananda Bharati* case (1973) judgment. Unless this Judgment is reversed by the Court on the review application of the Union Government or a new amendment of the Cnstitution is enacted and the Supreme Court upholds that amendment, the power of Parliament cannot extend beyond the limitations placed by the Constitution and the Supreme Court.

Despite these limitations on the authority of Parliament, it is the pivot on which revolves the whole machinery of the Government. Its legislative competence embraces a large field and its financial powers are vast. Its sanction is also necessary for declaring war and making peace. Parliament and the State Legislatures have equal rights to make laws in respect of subjects in the Concurrent List, but if a law enacted by a State Assembly is not in conformity to the law passed by Parliament, the law made by Parliament prevails. Parliament can also legislate on any subject in the State List if the Council of States declares by a resolution that it is necessary in the national interest to do so. During Emergency all restrictions on the legislative and financial jurisdiction of Parliament disappear.

Parliament is Bicameral

One of the most vexing questions of Political Science, wrote B. N. Rao in his *Constitutional Precedents* was the problem of second chambers. The first bicameral legislature was established in New Delhi under the Government of India Act, 1919, but the Upper House was never intended to have a federal role in the sense of providing for equal representation to the various Provinces. In 1919, the federal issue did not arise and the Government of India was constructed on the basis of devolution of authority from the Centre. In the federal structure as envisaged by the Nehru Report, the Upper House would have existed primarily to provide an opportunity for reconsideration of legislation in a "somewhat cooler atmosphere"[4] than that obtaining in the Lower House. Such a precaution was considered especially necessary owing to the existence of sharp communal differences that had been marked in the working of the Lower House at the Centre as well as in the Provinces. [5] The Nehru Committee rejected the argument that in a federal polity the constitu-

4. *Nehru Report*, p. 94.
5. *Ibid.*, pp. 94-95.

ent units should be equally represented in the Upper House, as in the United States' Senate, "in view of great differences in size and population of our Provinces." Yet it did recommend the number of representatives assigned to small Provinces could be increased so that their relationship to the great Provinces should not be "wholly disproportionate." The Committee felt that as the members of the Upper House were to be elected by the Provincial Legislatures, it would give the Provinces a feeling of being represented at the Centre.

The same reasons for not having equal representation of the constituent units in the Upper House were cited by the Federal Structure Sub-Committee at the Round Table Conference. The Sub-Committee added that it doubted if equal representation "would commend itself to general public opinion."[6] The Government of India Act, 1935, gave expression to this view point. The Sapru Committee made no recommendations on the subject, and, thus, the issue came to the Constituent Assembly.

The Union and Provincial Constitution Committees considered the question of second chambers in the meetings separately held in June 1947. The Union Constitution Committee was in favour of an Upper House of the State legislatures. Provincial representation was to be one member for each million of population upto five millions and one for each two millions of population thereafter. The maximum representation of a Province was to be twenty.[7] The Report of the Union Constitution Committee is silent for its rejection of equal representation of the constituent units. It may, however, be surmised the members of the Committee agreed with the views expressed in the Nehru Committee Report and at the Round Table Conference. They might also have feared, as B. N. Rau did, that if they allowed equal representation to all units of the Federation, the Provinces "would be swamped" by the Princely States when they acceded to the federation.[8]

The Constituent Assembly considered the report of the Union Constitution Committee during July and August 1947. The debate centred on the role of the second chambers in modern democracies and the necessity of any Upper House in a federal Legislature was discussed only once and that too cursorily. N. Gopalas-wami Ayyangar told the Assembly that "the need for a second chamber has been felt practically all over the world wherever there are federations of any importance." Dealing with the role of the second chambers, he said, "After all, the question for us to consider is whether it performs any useful function. The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues and to delay legislation which might be the outcome of passions of the moment until passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is a conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps to seasoned people who may not be in the thickness of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with House of the People. That is all that is proposed in regard to this Second Chamber. I think, on the whole, this balance of consideration is in favour of having such a Chamber and taking care to see that it does not prove clog either to legislation or administration."[9] It is significant to note that Ayyangar made no attempt to justify the existence of the Council of States on any of the grounds which are generally responsible for establishing a second chamber in a federation, especially giving equal representation to the federating units. The new Constitution also did not reflect it. Nor do the powers and functions of the Council of States demonstrate its federal character as a custodian of the interests of the constituent units.

COUNCIL OF STATES (RAJYA SABHA)

Composition and Organisation

The Constitution fixes the maximum strength of the Council of States (Rajya Sabha) at 250 including 12 nominated by the President to represent literature, science, art and social service. The maximum number of seats is 34 in the case of Uttar Pradesh and the minimum is 1(one) each for Sikkim, Nagaland, Manipur,

6. *Report of the Federal Structure Sub-Committee to the RTC;* Cmd. 3778, p. 218.
7. UCC report, para 14; *Reports, First Series,* p. 54.
8. Rau, B. N., in a note to his Memorandum on the Union Constitution of May 30, 1945.
9. *Constituent Assembly Debates,* Vol. IV, p. 644.

Tripura, Meghalaya and Mizoram. The representatives of States are elected by the elected members of their Legislative Assemblies in accordance with the system of proportional representation by means of the single transferable vote. In the case of the Union Territories, members are chosen in such a manner as Parliament may by law determine.

The principle of nomination was the subject of a good deal of criticism in the Constituent Assembly. Some members characterised it as an undemocratic and reactionary element of membership in a democratic republic. Representation of the States on the basis of population and inclusion of nominated members, it was contended, violated the federal principle too. During the early Constitution-making debate an amendment to establish a single chamber was moved, although it was defeated. When in the later debate on the Draft Constitution an attempt was again made for a single Chamber Legislature, Ananthasayanam Ayyangar defended the Upper House as a way to utilise the services of persons of intellectual capacity and experience of affairs without imperilling the administration. But all such arguments were in favour of bicameralism, and not in defence of the composition of an Upper House in a federation. Nor could it be claimed that the Council of States so constituted would serve as a defence for smaller States. The Council is a continuous body and is not subject to dissolution. Its life is for six years, one-third of the number of members retiring after every two years.

Qualifications for Members

To be qualified, a candidate for election to the Council of States should be :

(a) a citizen of India, and makes and subscribes before a person authorised by the Election Commission an oath and affirmation that he will bear true faith and allegiance to the Constitution of India as by law established and that he will uphold the sovereignty and integrity of India;
(b) not less than thirty years of age; and
(c) possessing such other qualifications as may be prescribed by Parliament. Under the Representation of the People Act, 1951, a candidate for election to the Council must be a parliamentary elector in the State from which he seeks election.

The qualifications required for eligibility to the Council of States are the same as those required for the House of the People except that the age in the case of the latter must not be less than twenty-five years. The framers of the Constitution thought that higher qualifications would tend to give greater dignity to the House and, at the same time, higher average ability. The functions, observed Ambedkar, that a member "is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affairs of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do."

The Presiding Officer

The Vice-President of India is the *ex officio* Chairman of the Council of States and finds a close parallel in the Vice-President of the United States who is the President of the Senate. The Vice-President of India like his American counterpart, is not a member of the House and both have no right to vote except in the event of a tie. But the President of the Senate is just a moderator. He cannot control debate through the power of recognition; he must recognise the members in the order in which they rise. The Chairman of the Council of States in India enjoys an exalted position. He recognises members to the floor, allots time,[10] decides point of order, maintains order and relevancy in debates, puts questions and announces results. The American Vice-President permanently relinquishes the office of the President of the Senate on his succession to Presidency, but the Vice-President of India fills only a casual vacancy and reverts to his original office of Chairman as soon as the contingency of his acting President is over.

The Council of States elects a Deputy Chairman from amongst its own members and he presides at the sittings of the House in the absence of the Chairman or during any period when the Vice-President is acting, or discharging the functions of the President. In the absence of both the Chairman and the Deputy Chairman from any sitting of the House such person, as may be determined by the Rules of Procedure of the Council of States, acts as Chairman. If no such

10. Chairman M. Hidayatullah fixed a duration of eight minutes per question.

person is present, some other member as the Council may determine acts as Chairman.

The Chairman may be removed from office by a resolution of the Council of States, provided at least fourteen days' notice for the intention to move such a resolution has been given, by a majority of all the then members of the Council, and agreed to by the House of the People. While such a resolution of removal is under consideration of the Council, the Chairman neither presides at any sitting of the Council nor can he exercise a casting vote in case of equality of votes, but he has the right to vote on such a resolution on the first instance. He has the right to speak in, and otherwise to take part in the proceedings in the Council. The Deputy Chairman is also subject to removal in the like manner, except that the resolution of his or her removal does not require the agreement of the House of the People as it is necessary in the case of the Chairman. The salaries and allowances of the Chairman and the Deputy Chairman are determined by Parliament and are charged on the Consolidated Fund of India. The office of the Vice-President carries no salary by itself.

FUNCTIONS OF THE COUNCIL OF STATES

Legislative Functions

The process of making laws is the business of the Parliament as a whole, that is, the President, the Council of States (Rajya Sabha) and the House of the People. The House of the People by itself can do nothing, although the actual powers exercised by the President and conferred on the Council of States (Rajya Sabha) are subject to specific limitations. All Bills, other than Money Bills, may originate in either House and no Bill can become a law unless agreed to by both the Houses and assented to by the President. It means that the power of initiating legislation on any non-Money Bill belongs to the Council of States and the House of the People, and such a Bill in order to become law must be agreed to by both the Houses. When a Bill is amended in either House, such amendment must be agreed to by both the Houses. In case of disagreement made in the Bill, the President may summon both the Houses in a joint sitting for the purpose of deliberating and voting on the Bill. At the joint sitting questions are decided by a majority of the members of both Houses present and voting. A Bill thus agreed to and passed is deemed to have been passed by both Houses. The method of joint sitting also applies when a Bill is passed by one House and sent to the other but is not passed within six months after its reception by the other House, excluding any period of prorogation or adjournment over four days.

The Council of States (Rajya Sabha), thus, possesses co-ordinate legislative powers with the House of the People. Unlike the Parliament Act of 1911 as amended in 1949, in Britain, there is nothing in the Indian Constitution which may limit the legislative powers of the Council of States. On the other hand, the Council of States may press an issue to the extent of summoning joint sitting of the two Houses for the resolution of any disagreement. The Banking Service Commission (Repeal) Bill was passed by the House of the People (Lok Sabha) on December 5, 1977, but rejected by the Council of States (Rajya Sabha) three days later. The President summoned a joint session of the two Houses to meet on May 16, 1978 to consider the Banking Service Commission (Repeal) Bill. It was the first joint session of Parliament since May 1961 when the two Houses met to resolve differences over the Dowry Prohibition Bill. But in a joint sitting the position of the Council of States becomes weaker as its membership is in a minority of 1 to 2 (250 to 544) with membership of the House of the People. The Council can, at most, delay legislation passed by the House of the People for a period not exceeding six months. It cannot permanently kill it.

Financial Functions

The position of the Council of States (Rajya Sabha) in respect of Money Bills is definitely inferior to that of the House of the People (Lok Sabha). The Constitution defines a Money Bill and it is expressly provided that the decision of the Speaker of the House of the People (Lok Sabha) whether a Bill is a Money Bill or not shall be final. The Constitution prescribes that a Money Bill shall not be introduced in the Council of States and it is barred from rejecting or amending a Money Bill. After a Money Bill has been passed by the House of the People (Lok Sabha), it is transmitted to the Council of States (Rajya Sabha) for its "recommendations" within a period of fourteen days. It is for the House of the People to accept or reject such "recommendations." In case it rejects the "recommendations," the Bill is deemed to have been passed by both Houses in the form in which it was passed by the House of the People. If the Council of

States does not return to the House of the People within fourteen days a Money Bill with or without its recommendations," it is deemed to have been passed by both Houses in the form in which it was passed by the House of the People.

The right to vote supplies is perhaps the greatest privilege of a legislative body and under the Constitution this right is the exclusive privilege of the House of the People. The Council of States simply discusses the budget. Demands for grants are not submitted to the Council.

Administrative Functions

The Council of States does not control the Executive as the Constitution makes the Council of Ministers responsible to the House of the People. In fact, control and responsibility go together. But the Council of States can influence the Executive in two ways. First, by eliciting information about the actions of Government and secondly, by criticism aimed at the Government. The most effective instrument by which the Council of States seeks information from the Government is through the instrument of oral or written questions together with supplementaries. The normal occasion for criticism of the Executive is debate on a motion of adjournment and the Council shares this privilege with the House. The policy of the Government is really under review when laws are made and the motion of thanks on the address of the President is being discussed. In order to defend the policy of the Government, Ministers are there and some of them are appointed from among its members. The Constitution permits a Minister, who is not a member of the Council, to speak in, and otherwise to take part in its proceedings, though he has no right to vote in that House. The Council, however, cannot bring about the downfall of the Government as the Constitution makes it responsible to the House of the People alone. But the Council amended the President's address to Parliament in January 1980 by the combined strength of the Opposition which commanded a majority. This was the first time since the promulgation of the Constitution in 1950 that the President's address had been so amended and it set an unusual precedent.

Constituent Functions

The Council of States exercises constituent functions along with the House of the People. A Bill to amend the Constitution may originate in either House. But all Constitution-amending Bills, except the Constitution (Fortieth Amendment) Bill, 1975, have been initiated in the House of the People. A Bill amending the Constitution under article 368 must pass in each House by a majority of not less than two-thirds of the members of that House present and voting. But if such amendment seeks to make any change in Article 54 (election of the President), Article 75 (manner of election of President), Article 73 (extent of executive power of the Union), Article 162 (extent of executive power of the State), Article 241(High Courts for Union territories), or Chapter IV of Part V (the Union Judiciary), Chapter V of Part VI (High Courts), or Chapter I of Part XI (Legislative relations between the Union and the States), or any of the Lists in the Seventh Schedule, or any representation of States in Parliament, or the provisions of Article 368 (amendment of the Constitution) the amendment also requires to be ratified by the Legislatures of not less than one-half of the States by resolution to that effect passed by those Legislatures before the amendment Bill is presented to the President for assent.

The Constitution does not prescribe any procedure for settling differences between the two Houses in case of disagreement on an amendment Bill. The procedure prescribed in Article 108 in case of disagreement on ordinary legislation does not apply to Bills amending the Constitution. Hari Chand is of the opinion that the House of the People represents the will of the people and, consequently, the will of the people must prevail and the Council of States must not become an obstacle in the way of the popular Chamber. "Moreover, in case the amendment relates to any of the entrenched provisions, the interests of the States are not in danger, because the amendment would require ratification by at least half the States Legislatures and the States can take care of their interests better than the Upper House."[11] But this is not a correct appraisal. The Council of States defeated the Constitution (Twenty-fourth Amendment) Bill, 1970, though by only a fraction of vote, and, again, in 1977 discussion on the Forty-third Amendment Bill was postponed till the next session of Parliament apprehending stout opposition by the Congress (I) which then commanded a majority in the Council. The Opposition also successfully thwarted the Constitution (Forty-fourth Amend-

11. Hari Chand, *The Amending Process in Indian Constitution*, p. 25.

ment) Bill which was intended to amend the distortions wrought by the Constitution (Forty-second Amendment) Act, 1978, as viewed by the Janata Government and had been passed by an overwhelming majority in the House of the People.

Miscellaneous Functions

The miscellaneous functions of the Council of States are :—

(1) The elected members of the Council of States participate in the election of the President of India. The President is elected by an Electoral College consisting of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States.

(2) The President is liable to be impeached and a resolution to impeach the President may be moved in any House of Parliament and such a resolution must be passed by two-thirds majority of the total membership of that House. When this has been done, the charge is investigated by the other House or by a Court or Tribunal to which that House may refer the Impeachment charge to be investigated. A vote by two-thirds of the total membership of the House which investigates it is necessary for the impeachment to succeed. It means that if the Council of States initiates proceedings of impeachment the House of the People investigates the charge, and if it is initiated by the House the Council investigates and the impeachment, succeeds if the investigating House passes a resolution by a two-thirds majority of its membership. The Council of States, thus, enjoys co-equal powers with the House of the People in the process of impeachment of the President.

(3) The Vice-President of India is elected by an electoral college consisting of the members of both Houses of Parliament and may be removed from his office by a resolution of the Council of States and agreed to by the House of the People.

(4) A Judge of the Supreme Court or a High Court may be removed for misbehavior or incapacity on the address passed by both Houses of Parliament, supported by a majority of the total membership of, and a two-thirds majority of the members present and voting in each House. Here, too, the powers of the Council of States are identical to those of the House of the People. Agreement of the Council is also necessary if action is to be taken against the Chief Election Commissioner, Comptroller and Auditor-General of India and the members of the Union Public Service Commission.

(5) The report of the Union Public Service Commission, the Comptroller-General, the Scheduled Castes and Tribes Commission and the Finance Commission and are considered both by the Council and the House.

(6) If the Government makes a proposal to take an appointment from he purview of the Union Public Service Commission, both the Houses must agree to its exclusion.

(7) The Council may declare by a resolution, passed by two-thirds majority of its members present and voting, that it is necessary or expedient in the national interests that Parliament should make laws with respect to any matter enumerated in the State List. Such a resolution remains in force for a period not exceeding one year.

(8) The Council is also empowered under Article 312 to create one or more All India Services, if the House of the People declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so.

(9) The approval of the Council of States is necessary for the continuance of a Proclamation of Emergency (Article 352), failure of constitutional machinery in a State (Article 356), and financial emergency (Article 360) , beyond the specified period of time. If the House of the People stands dissolved when a Proclamation is issued or it is dissolved before the expiry of the specified period of time the Council of States alone is to judge the necessity of the continuance of a Proclamation issued under either of the aforesaid Ar-

ticles. If it does not approve, the Proclamation ceases to operate.

(10) Every Order made by the President suspending the enforcement of Fundamental Rights is required to be laid before each House of Parliament.

(11) The delegated legislation made and rule framed thereunder by various Ministries must be approved by both Houses.

Role of the Council of States

The Council of States was intended to be less powerful and influential than the House of the People and this is in accordance with basic principles which govern the functioning of the Parliamentary system. The Constitution does not give to the Council specific powers to control the Executive. A motion for lack of confidence in the Government cannot be moved therein. It has, no doubt, the right to seek information from the Government through the instrument of questions and supplementaries, to discuss and criticise its policy through debates, and to draw attention to matters of urgent public importance, through the "calling attention" motions but the Council can not plague the Ministry and oust it from office. The Constitution recognises and ordains the collective responsibility of the Council of Ministers to the House of the People alone.

The Council has co-ordinate powers with the House of the People in ordinary and amending legislation only in theory. It cannot veto legislation passed by the House of the People, but can only delay it. If the differences between the two Houses cannot be settled in the ordinary process of the legislation the President may summon a joint sitting of the two Houses where the will of the House of the People prevails because of its numerical superiority. In matters financial, the Council is absolutely powerless, even not at par with the British House of Lords. Money Bills originate in the House of the People and if a question arises whether a particular Bill is a Money Bill or not, the decision of the Speaker is final. The House of the People simply transmits a Money Bill to the Council for " recommendations" and it is required to return it within fourteen days of its receipt. If it is not returned within the specified time or returns it with "recommendations" which are not acceptable to the House of the People, the Money Bill is deemed to have been passed by both Houses, in the form in which it was originally passed by the House of the People. Demands for grants are not submitted to the Council; sanctioning of public expenditure is the exclusive right of the House of the People.

The Council does not even serve the purpose of a federal second chamber. Neither the critics of a Second Chamber in the Constituent Assembly nor its supporters did advance a single federal argument. The well-accepted practice of a federal polity is to make the Upper Chamber a representative House of the constituent units and its constitution is based upon equality by representation irrespective of the size and population of the federating units. The Council of States does not accord equal representation to the States of the Union of India. It is not, at the same time, the voice of the States and has no power to safeguard their interests. The justification of the Council of States, remarks Morris-Jones, "has always been in terms of 'second thought' rather than 'State rights.'"[12] On no occasion the federal conscience of the members of the Council of States revolted whenever the State Assemblies were dissolved; even nine Assemblies twice at one stroke in 1977 and 1980, without any valid reason or cause and contrary to the expectations of the framers of the Constitution.

It does not, however, mean that the Council of States occupies the same pitiable position as French Council of Republic under the Constitution of the Fourth Republic. Nor is it so ineffective as the Canadian Senate. "There is a misconception," wrote B.D. Jatti, Vice-President of India, "about the powers of the Rajya Sabha in financial matters." [13] It is true, he says, that Money Bills cannot be introduced in the Council and it is deemed to have been passed by both Houses if the Council does not make any "recommendation" within fourteen days and if "recommendations" are made it is up to the House of the People to a accept or reject such "recommendations." But the Constitution also provides that the Union Budget is to be laid before both the Houses of Parliament and it is discussed in the Council also, although the demands for grants are to be made only in the House of the People. A practice has, however, come into vogue that the Council of States discusses the working of

12. Morris-Jones, W.H., *The Government and Politics of India*, p. 193. Also refer to N. Gopalaswami Ayyangar's observations in the Constituent Assembly, *Constituent Assembly Debates*, Vol. IV, p. 644. and cited *ante*.

13. "Role of Elders", *The Tribune*, Chandigarh, January 26, 1975.

three or four important Ministries as it chooses during the Budget session. The reports of the Comptroller-General relating to the accounts of the Union are also laid before both Houses. The Council of States is also represented on two of the financial committees of Parliament—the Committee on Public Accounts, and the Committee on Public Undertakings.

The Council of States has, thus, a fairly adequate opportunity in influencing and even shaping the financial affairs of the country. It has not hesitated to recommend quite a number of amendments in the Income-Tax Bill, 1961 and the House of the People accepted all the proposed amendments.

The Council of States significantly performs the function of influencing the Government and weightage is given to the views expressed on the floor of the House by elder statesmen and eminent parliamentarians. Since the Council is smaller in membership and less worried by the pressure of work, the debates in the Council are less frequently subject to time control through time limits. The Council provides a calmer atmosphere where members can debate controversial questions in well-informed and objective manner. The debates are often outspoken marked by dignity and a remarkable responsiveness of public opinion. The tradition of dignified debates, observed, B.N. Banerjee, "which was built up by the House is the result of a happy combination of circumstances not the least of which is the fact that the five Chairmen of the Rajya Sabha[14] so far are among the most eminent person experts in their own lines." All these persons "have given an aura of dignity to the atmosphere of the House by conducting the proceedings with judicious combination of firmness and flexibility."[15]

The co-equal powers of the Council of States on constitutional amendments are of great importance. The House of the People cannot by itself amend the Constitution unless the Council agrees to such a change. The provisions of Article 108 governing the joint sittings of the two Houses in case of disagreement do not apply to Bills amending the Constitution. The Constitution (Twenty-fourth Amendment) Bill, 1970, which was passed by an overwhelming majority in the House of the People, was defeated in the Council of States by only a fraction of vote and, consequently, the amending Bill fell through. Apprehending stout opposition to the Constitution (Forty-third Amendment) Bill, 1977, its decussion was postponed till the next session of Parliament. The Council refused to adopt the Constitution (Forty-fourth Amendment) Bill 1978 except with five amendments. The Congress Opposition stalled on April 11, 1977 the final passage of the two official Bills, one to extend the term of Goa, Daman and Diu and Mizoram Assemblies, and the other to extend the term of the Delhi Metropolitan Council. Intervening in the discussion on a non-official Bill moved by the Communist Member Bhupesh Gupta seeking to amend Article 368 to provide that in the event of a disagreement between the two Houses over an amendment Bill of the Constitution there should be a joint session for resolving the differences, the Law Minister said that such suggestions were considered in 1971 and found unnecessary.[16]

Even with regard to ordinary legislation referred by the President to a joint sitting of the two Houses under article 108, B.N. Banerjee, the Secretary-General of the Council of States, rebutted the argument that the views of the House of the People will invariably prevail because of its numerical superiority. He explains that the critics of the Council of States "ignore the fact that a disagreement which may arise on important issues may not be the House *qua the House* but may arise on the basis of policies and approaches of the different political parties in the two Houses on the various issues. It is possible to contemplate a situation in which the decision of the Lok Sabha may be outvoted in joint sitting of two Houses.[17] There have been only two joint sittings of both Houses so far in order to resolve a deadlock on the Dowry Prohibition Bill in May 1961, and on the Banking Service Commission (Repeal) Bill in May 1978. In the Dowry Prohibition Bill one of the most important amendments, which the Council of States had been insisting from the beginning and the House of the People had been refusing to accept, was adopted at a joint sitting in May 1961.

The Constitution confers on the Council two special powers exclusively exercised by it

14. S. Radhakrishnan, Zakir Hussain, V. V. Giri, G. S. Pathak, B.D. Jatti, (M. Hidayatullah, and R. Venkatraman). The eighth Chairman, Dr. Shankar Dayal Sharma was another illustrious Vice-President.
15. "Rajya Sabha at work", Shakdhar, S. L. (Ed), *The Constitution and Parliament of India*, p. 314.
16. As reported in *The Times of India*, New Delhi, March 20, 1976.
17. "Rajya Sabha at work," Shakdhar, S.L. (Ed.), *The Constitution and Parliament of India*, p. 311.

and not shared with the House of the People. As stated earlier, Parliament is empowered to legislate with respect to any matters on the State List of the Seventh Schedule if the Council of States declared by a resolution that it is necessary or expedient in the national interest that Parliament should make laws thereon. Again, under Article 312 if the Council passes a resolution declaring that it is necessary or expedient in the national interest to create one or more All-India services common to the Union and States, Parliament will have the power to create by law such services. The Council of States twice passed such resolutions in 1961 and 1965. The resolution passed on December 6, 1961 recommended the creation of Indian Service of Engineers, the Indian Forest Service and Indian Medical and Health Services. On March 30, 1965 the Council passed a resolution for the creation of the Indian Education Service, though both these resolutions have not been implemented so far.

As a body which is not subject to dissolution but which perpetually renews itself every two years, the Council of States symbolises the permanence and continuity of Parliamentary institutions of the country. This continuity acquires a special significance when the House of the People stands dissolved and the Council of States is to discharge the Constitutional obligation under Articles 352, 356 and 360 relating to declaration of Emergency either due to war or external aggression or armed rebellion or threat thereto; breakdown of the constitutional machinery in a State; or financial Emergency.

These specific constitutional provisions make the Council of States an integral part of the machinery of Government. It is true, that the Council of States was not designed to vie with the House of the People, but it was not also the intention of the Constitution-makers to render the Council to play the "humble role of an unimportant adviser" or an occasional check on hasty legislation. In practice, the Council has, from the beginning of its career, played its role effectively in the affairs of the State and has vigorously focussed the attention of the Government on many matters of special importance in the life of the nation. In 1969, the Council passed the resolution that "this House is of the opinion that Government should take legal and other steps for the abolition of privy purses and privileges of ex-rulers before presentation of the general Budget in the coming February session of Parliament." The Council also acclaimed the nationalisation of the fourteen banks. The vigilant members of the Council made persistent demands during discussions for inquiring into the charges against the Punjab Chief Minister Partap Singh Kairon, grant of industrial licences to the Birlas and the affairs of Dharam Teja and Jayanti Shipping Company. Likewise, public attention on alleged irregularity in respect of import licences to some firms of Pondicherry was focussed for the first time through a starred question on August 27, 1974. Again, on August 10, 1978 the Council of States adopted a resolution demanding a probe into allegations of corruption against members of the families of Prime Minister Morarji Desai and Home Minister Charan Singh. The Chairman, B.D. Jatti, pointed out that the motion was necessarily a "recommendation" and it was for the Government to accept or not. When the Government decided not to accept the "recommendation", the Council asserted itself in a way thwarting the proceedings of the House compelling the Prime Minister to announce the Government's decision to refer the charges as contained in the resolution of the Council to the Chief Justice eventually leading to Vaidialingam probe which indicted the close relations of Desai and Charan Singh. The important committees, like the Committee on subordinate Legislation and Committee on Government Assurance have always played an effective role in influencing and supervising the administrative actions of the Government. The Committee on Petitions has proved to be a useful forum for ventilating the grievances of the public and getting redressed. B.D. Jatti, the former Vice-President of India and the Chairman of the Council, asserted that the Council of States "by its record of work has proved to be an effective force and I can say with confidence that in the years to come the critics of the second chamber are bound to find themselves in negligible minority."[18]

The Council of States has certainly belied the apprehensions of the critics of bicameralism in the Constituent Assembly that the Council will be "a clog in the wheel of progress of India", or that it could serve to keep the capitalistic outlook safe in India and that it would be a "unnecessary drain on our poor economy." The world has come a long way from Abbe Sieyes who disfavoured bicameralism with the epigram : "If a

18. "Role of the Elders," *The Tribune*, Chandigarh, January 26, 1975.

second chamber dissents from the first, it is mischievous; if it agrees it is superfluous" Democracy proved that neither it is mischievous nor superfluous. The role and relevance of bicameralism has now veered round to John Stuart Mill who wrote, "A majority in a single Assembly .....easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred by another constituted authority." India has a long tradition of its assemblies going down to the post-Vedic period and that heritage finds expression in a verse from Mahabharata inscribed on the opening page of "Twenty-five years of Rajya Sabha" brought out by the Rajya Sabha Secretariat in 1977 :

> That's not an Assembly where there are no eldermen,
> Those are not elders, who do not speak with righteousness.

But there is one aspect against which the Council of States must guard itself. While welcoming the sixty-four new members of the Council of States on April 6, 1960, Vice-President Radhakrishnan called upon them to fight "inertia, obscurantism, reaction and superstition." These are the evils from which second chambers suffer in general and invite a widespread demand for their abolition. The Council of States should not be allowed to become a political prisoners' home. Law-making is a specilised job; and a modicum of technical knowledge and a certain intellectual ability are essential even to understand the problems that confront Legislatures in our times. The criterion laid down in the Constitution for nominations is a partial indication of what is expected of a second chamber. But it is evident from the nominations so far made that to a great exent the intentions of the framers of the Constitution have not been realised. The Congress did not always consciously try to fill the nominations with a corpus of special knowledge such as cannot be ensured in the House of the People.[19] Nor have the indirect elections of the remaining members introduced a body of seasoned parliamentarians, who might import into the debates "an amount of learning and importance", as Gopalswami Ayyangar argued in the Constituent Assembly. According to Morris-Jones the Council of States has three outstanding merits : "It supplies additional political positions for which there is a demand, it provides some additional debating opportunities for which there is occasionally need, and it assists in the resolution of the legislative time table problems." It is, accordingly, incumbent on all political parties to help the Council of States to play its requisite role by sending to it members whose party grading may be low but I.Q. is high.

"But the House of the Elders is no longer elderly, feels the Chief Reporter, S. P. Agarwal, of the Council who retired recently after covering the Upper House for over thirty years. His observations are relevant to the atmosphere that now prevails in this House as compared to 1952, when it began its career. The first ten years of the Council of States were the House's finest hours. During this period there was hardly an occasion to call the House to order. Even if a member spoke for an hour he was heard with respect and without interruption. Points of order were rare. According to Agarwal there were less than a dozen expuctions during this period. Members themselves withdrew any word they felt was unparliamentary.

But the change began in the early seventies and "the Rajya Sabha today has become more youthful. It is now vibrating with the situation prevailing outside in the country. The quality of the debate as also the composition is not as merited today as it was in the past. A major time of the House is lost in personal and party squabbles. Scant attention is paid to the rules of procedure and the rulings of the Chairman are invariably defied. Use of unparliamentary language and unruly behaviour rule the day. There are "half a dozen expunctions in every session" and not a day passes without an order that a Member's speech should not be recorded. The practice of ordering the House reporters not to take notes as the Member refuses to listen to the Chairman's entreaties to be seated has become "in vogue" since seventies.[20] Walk-ups is a normal feature.

19. C.C. Desai (Swatantra) moved in the House of the People a non-official Constitution Amendment Bill seeking to abolish nominations to the Council of States. His contention was that provisions of Article 80 had been misused. P. Govinda Menon, Law Minister, who intervened in the debate, said that it would be prudent to leave this provision alone so long as it did not prove injurious to the country's interests. He maintained that any human institution was prone to lapses. It could even be said, he added, that an element of patronage was inherent in any system of nominations. But it was undeniable that many of the nominated members had made significant contribution to the debates through their specialized knowledge.

20. *Indian Express*, New Delhi, August 4, 1982.

But the most disturbing development is the defiance of the Chairman's rulings and often use of in decorous language on his observations and comments on minor points at issue or when the Chairman performs his duty to protect the right of a Private Member in seeking more information on a question raised. Such an attitude of the parliamentarians and more so of seasoned Members of the House and Ministers, too, not only undermines the authority and dignity of the Chair, but the prestige of the House itself. A sharp clash between the Chairman, M. Hidayatullah, and the leader of the Janata Party of the House marked the start of the proceedings on September 15, 1981. Seconds after the Chairman occupied his seat and called for the first question, Piloo Mody stood up to ask him when he and some of his colleagues could raise certain issues in his (M. Hidayatullah's) presence in the House. The Chairman told him that he did not have to guarantee his presence in the House, but "You can certainly come to my chamber and raise anything you want." When Mody sharply insisted that the members of the House were entitled to raise matters in the House in his presence and not in his chamber, the Chairman reminded him, "Nobody seems to have told you that you are sometimes inclined to be rude." Mody retorted, "I am inclined to be rude as I am recipient of rudeness also. I hope you will take it in the same spirit."[21]

But Pranab Mukherjee's behaviour, who was the Finance Minister and the Leader of the House, reveals more than it can be described. On November 2, 1982, the Chairman intervened on behalf of a Member who was not satisfied with the Finance Minister's replies to a question on World Bank loans to developing countries. The Minister replied that he had already given the requisite information. But the Chairman did not agree with him. The Minister thereupon became sharp in his reply. The Chairman told him, "There is such a thing as politeness." Mukherjee retorted, "Yes, that is why I do not want, that you should come between me and the Member." The Chairman reminded him, "I will, that is why I am sitting in the Chair." Mukherjee curtly replied, "I will accept your ruling without any question.....But don't have a running commentary. Let me answer the question in my own way."[22]

Relevant proceedings of the Constituent Assembly suggest that rewarding talent was not the sole aim of the Constitution-makers in providing for nominated members. They visualised the Council of States as a mechanism for moderating, rather than rivalling or thwarting the House of the People (Lok sabha).[23] One member likened the Upper Chamber to the saucer that might cool the beverage in a cup but which could never threaten the cup. If the Council of States was to mellow the Lower House's emotions with fresh reflection, the nominated members were to be of a special value as they were expected to add a component wisdom that was not only specialised but also detached and non-partisan. But this precious expectation has not been fulfilled as nominations have now degenerated into party spoils.

Even biennial elections to the Council of States are being fought strictly on party lines and selection of candidates is made purely on party considerations. Those who, per chance, were non-party nominees they did not remain aloof from active politics and many formally joined the ruling party as it was rewarding to do so. The Anti-defection law is now a great deterrent, but such nominations are not likely to disappear altogether. The voting pattern of most others shows that they have generally sided with the Government whatever be the merit of the measure under consideration. Independence and talent are guarantees against the principle of nomination in vogue.

Relations between the Houses

Jawaharlal Nehru gave a succinct exposition about the relations of the Council of States and the House of the People. "Under our Constitution," he explained, "Parliament consists of two Houses, each functioning in the allotted sphere laid down in the Constitution.....sometimes we refer back to practice and conventions prevailing in the Houses of Parliament of the United Kingdom and even refer erroneously to an Upper House and Lower House. I do not think that is correct.....To consider either of these Houses an Upper House or a Lower House is not correct Each House has full authority to regulate its procedure within the limits of the Constitution. Neither House by itself constitutes Parliament. It is the two Houses together that are the Parliament in India. The successful working of our constitu-

21. As reported in *Indian Express*, New Delhi, September 16, 1981.
22. As reported in *The Times of India., New Delhi, November 3, 1982.*
23. *Constituent Assembly Debates*, Vol. IV, pp. 928 ff.

tion, as of our democratic structure, demands the closest cooperation between the two Houses." The Council has powers similar to those of the House of the People, except in matters financial and responsibility of the Council of Ministers. The party composition of both Houses remained similar till March, 1977 when Congress lost its majority in the House of People but regained its previous position after January 1980, though it did not command a two-third majority. Even the social composition of the Council and the House resembles each other. The Council had its members the galaxy of some eminent personalities who served the Council since it came into existence; Pattabhi Sitaramayya, Sardar K. M. Panikkar, Dr. Tara Chand, Dr. Radha Kumud Mukherjee, Prof. S. N. Bose, B.R. Ambedkar, Alladi Krishnaswami Ayyar, P. N. Sapru, G. S. Pathak, M. C. Setalved, M. C. Chagla, C. K. Daphtary, K. Santhanam, Rama Krishna Rao, Dr. Ramaswami Mudliar, R.R. Diwakar and Bhupesh Gupta are a few of the many more. The procedure for the conduct of business in both Houses is also not appreciably distingushable. The Council has a regular question hour [24] and the same half-an-hour discussion procedure as in the House of the People. From 1964 the revised Rules of Procedure provide for discussion on matters of urgent public importance. Petitions for redress of grievances can be made to the Council. A new Committeé, namely, the Committee on Subordinate Legislation has since been extended by including within the ambit of its functions various rules, regulations and orders framed in pursuance of the Constitution also. [25] The Committee on Government Assurances has also been set up.

The Government, too, had made an effort to introduce first in the Council of States an increasing number of public Bills. Since 1952 up to the end of December 1974, 312 Government Bills were introduced in the Council. From the analysis of the subject-matter of those Bills it can definitely be said that quite a good number of them were of immense social, educational and legal importance. Apart from the Hindu Marriage and Divorce Bill, 1952, the Hindu Minority and Guardianship Bill, 1953, the Hindu Succession Bill, 1954 and the Hindu Adoptions and Maintenance Bill, 1956, some of the more important legislative measures introduced in the Council were the Working Journalists (Industrial Disputes) Bill, 1955, the Children Bill, 1959, the Foreign Marriage Bill 1963, the Press Council Bill, 1963, the Banaras Hindu University (Amendment) Bill 1964, the Jawaharlal Nehru University bill 1964, the Monopolies and Restrictive Trade Practices Bill, 1967, the Medical Termination of Pregnancy Bill, 1969, the Code of Criminal Procedure Bill, 1970, the Foreign Contribution (Regulation) Bill, 1974. The Constitution (Fortieth Amendment) Bill, 1975 was also initiated in the Council of States.

The Council of States, thus, started its career on the same lines as the House of the People. But being a chamber primarily intended for reflection, its members had the psychological realisation of its inferiority and, consequently, they felt frustrated. There had been also vehement critics of bicameralism who strongly pleaded for its abolition. But, "it is the habit of institutions," as Morris-Jones had remarked, "to give birth to loyalties."[26] The Council, therefore, tried to assert itself in order to remove the impression of its inferiority. A bitter rivalry between the two Houses soon developed despite the dominating position of one party in both Houses.

The first clash between the two Houses occurred during the Budget session of 1953 when the Council of States refused to accept the position of subordination by disallowing the Law Minister, a member-Minister of the Council, to appear before the House of the People, on its call, to clear some misunderstanding that had arisen on the Income-Tax (Amendment) Bill, 1952. The Council of States thereupon passed a resolution that "this Council is of the opinion that the Leader of the Council (Law Minister Biswas) be directed not to present himself in any capacity whatsoever in the House of the People." It angered the members of the other House and they asserted that Ministers were responsible to the House of the People and doubted the propriety of the Council's resolution." There would have been an open rupture if the tactful intervention of the Prime Minister had not saved the situation.

Soon there was another occasion for conflict. In January 1953 the Rules Committee of the Council of States sent its proposals with regard to the Public Accounts Committee to the House

24. When the Council met for the first time in May 1952 the question hour was restricted to only twice a week.
25. Previously the Committee examined and scrutinised rules, regulations and orders in pursuance of legislative functions only.
26. Morris-Jones, W.H., *Parliament in India* p. 2[illegible]

of the People. It had suggested that the Council should have either a Public Accounts Committee of its own, or seven of its members should be added, to make it a joint committee of both Houses. The Public Accounts Committee passed a resolution that a joint committee of the two Houses or a separate committee of the Council "would be against principles underlying the Constitution." The Rules Committee of the House of the People, which considered the proposal of the Rules Committee of the Council, agreed with the opinion expressed by the Public Accounts Committee in its resolution. The matter would have ended there, but the motion of the Prime Minister in the House "to recommend to the Council of States that they nominate seven members to associate with the Public Accounts Committee of this House" brought the issue in the open. The motion of the Prime Minister did not envisage a Joint Public Accounts Committee of two Houses, yet it caused a good deal of criticism and resentment in the House of the People. It was on the assurance of the Prime Minister that the Committee would be a Committee of the House of the People under the control of the Speaker and that the financial powers of the House were in no way threatened that the motion was finally passed in December 1953 and the seven members of the Council of States joined the Public Accounts Committee in May 1954. Similar difficulties arose with regard to the composition of Joint Committees of both Houses and somewhat sullenly the House of the People agreed to the proposals of the Council of States.

The Chatterjee incident engendered still more excitement and resentment. N.C. Chatterjee, a Member of the House of the People, was reported to have said that the Upper House, "which is supposed to be a body of elders, seems to be behaving irresponsibly like a pack of urchins." The question of privileges was raised in the Council of States and the Chairman directed the Secretary of the Council to ascertain the facts. The House members objected to the letter of the Council Secretary inquiring from N. C. Chatterjee whether the report was correct. The Speaker held that the Secretary's letter was more "in the nature of a writ" and suggested that the reference to this particular issue, and the general problem of procedure in such cases be made to a joint meeting of the Privileges Committees of both Houses. The Council agreed to the Speaker's suggestion and the two Privileges Committees worked out an acceptable procedure for cases where a member of the House commits a breach of the privileges of the other.

The Chairman of the Legislative Council (Rajya Sabha) M. Hidayatullah, while interpreting Rule 187 relating to the rights and privileges of the members of the Upper House on the Parliamentary Committee on Public Undertakings gave his ruling, July 1982, that members of the Council on this Committee were "associate members." As a consequence of this ruling the Opposition members of the Council in Public Undertakings Committee and the Public Accounts Committee resigned *en bloc*. The opposition members unanimously demanded that Rule 187 be so amended as to remove the anomaly at the earliest. The Speaker of the House of the People in his ruling on the issue recalled what Jawaharlal Nehru had said on May 13, 1953 in support of the motion for association of members of the Council of States with the Public Accounts Committee and observed, "It has been ceaseless endeavour" to live up to Nehru's sagacious counsel "in letter and spirit". Intervening in the discussion, Finance Minister Pranab Mukherjee assured the Council, on August 2, 1982, that it would not be difficult to sort out the matter on the basis of the usages, practices and conventions and the Speaker's ruling of July 28, 1982 that members of both Houses of Parliament were equal in every respect.

These disputes brought into prominence the question of the utility of the Council of States. A Private Member moved a resolution in the House of the People in April, 1954 demanding the abolition of the Upper House. Some Members of the House belonging to the Congress Party and the Leftists advanced the same old familiar argument that the Council of States was a stronghold of reactionary elements and a device to flout the voice of th people. One Member spoke about "the mad drive towards equalisation of powers and functions." Some argued for the retention of the Council of States but urged that its members should be chosen differently. The Government view was that the Council of States had not been given a fair trial and that it was too early to pronounce a judgment on its utility. Once again, after two decades, Niren Ghosh, Marxist member of the Council, while welcoming B.D. Jatti, on assuming the office of the Vice-President of India and, as such, Chairman of the Council on August 31, 1974, on behalf of his Party, said

that the Council of States represented the States of the Union and the nationalities of the Union and accordingly, deserved to be "upgraded" in its parliamentary powers. He suggested that the Constitution be so amended as to give equal powers, to the Council of States and the House of the People.[27]

Unless it is acceptably proved that democracy does not need a second chamber, and more so a federation, it is not democratic to urge for its abolition. Institutions are always reluctant to vanish and it does not seem likely that public opinion could be made to agree to the liquidation of the Council of States. But enjoyment of identical powers and functions by both of Houses means a sheer duplication and the advantages of such a system of legislature are questionable. Democracy has decidely made the representative Chamber a predominant partner, and the second Chamber is created to exercise a moderating influence, a couterposise to democratic fervour, a safety which lies to sober second thought and, consequently, a check on hasty and ill-considered legislation. It serves as a brake, but not too tight a brake which may lead to an open rupture between the two Chambers. The intention of the framers of India's Constitution was significantly clear on this point and the Constitution itself is quite specific about it. Once this point is appreciated by both the Houses the cause or causes of conflict, if any, are sure to disappear and each House will shine within its allotted sphere of functions. Incredible as it may seem, even a former Prime Minister is known to have told some senior Members of the Council of States on more than one occasion that the "Lok Sabha is the real Parliament. We are directly elected by the people not indirectly. Whom does your House represent? It should be abolished." He altogether forgot that India is a federation for which second Chamber is the prerequisite condition as it represents the States, its constituent units.

Such like utterances create confusion and friction without realising the repercussion on the body politic. Morris-Jones has succinctly said, "What is certain is that peaceful co-existence is difficult if the two Houses continue to desire to perform the same functions." If their roles are not soon distinguished, "the tradition of rivalry will soon become established and the Council will continue to attract a large number of persons who would have been more readily found themselves in the House of the People." The practice of rivalry is most wasteful exercise of political energies "and it can only serve to lower Parliament as a whole in public esteem,"[28] he added.

B. D. Jatti foresees an important role that the Council of States may play in the body politic of the Country. He maintains, "In view of the present political set-up in the country a situation may arise when the governments in a number of States may be run by political parties other than the party at the Centre and this will have its impact on the Rajya Sabha. Then the Rajya Sabha will have an important role to play in handling the problem of federal adjustment."[29]

THE HOUSE OF THE PEOPLE (LOK SABHA)

Composition and Organisation

The House of the People (Lok Sabha) is the representative Chamber of Parliament of India. It had a maximum membership of 525; not more than 500 members chosen by direct election from territorial constituencies in the States and not more than 25 members from the Union Territories chosen in such a manner as Parliament by law provided. The Constitution (Thirty-first Amendment) Act, 1973, increased the upper limit for representation of the States to 525 and set the limit for representation of the Union Territories at 20. The Goa, Daman and Diu Reorganisation Act, 1987, necessitated further change in the composition of the House of the People. Article 81 now provides that subject to the provisions of Article 331, relating to nomination of not more than two members of the Anglo-Indian Community the House of the People shall consist of :

(a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union Territories, chosen in such manner as Parliament may by law provide.

A person is qualified to be chosen to fill a seat in the House of the People if he :-

(a) is a citizen of India, and makes and subscribes before some person author-

27. As reported in *The Hindustan Times*, New Delhi, September 1, 1974.
28. Morris-Jones, *Parliament in India*, p. 262.
29. *The Tribune*, Chandigarh, January 26, 1975.

ised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution;[30]

(b) is not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

In the case of a seat reserved for the Scheduled Castes in any State, a candidate for election to the House of the People should be a member of any of the Scheduled Castes, whether of that State or of any other State and should be a elector for a parliamentary constituency. In the case of a seat reserved for Scheduled Tribes in any State, he should be a member of any of the scheduled Tribes, whether of that State or of any other State and should be an elector for any parliamentary constituency.

A person is disqualified for being chosen as, and for being a member of either House of Parliament :—

(i) if he holds any such office of profit under the Government of India or the Government of any States as is declared by Parliament by law to disqualify its holders;

(ii) if he is of unsound mind and stands so declared by a competent court;

(iii) if he is an undischarged insolvent;

(iv) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State; and

(v) if he is so disqualified by or under any law made by Parliament.

Article 103 deals with the decision on questions as to disqualification of members. Originally, it provided that all questions about the disqualification of a person would be decided by the President in accordance with the opinion rendered by the Election Commission. The Constitution (Forty-second Amendment) Act, 1976, substituted a new Article providing that the question whether a member had become subject to any of the disqualifications mentioned in Article 102 (1) or as to whether a person, found guilty of a corrupt practice at an election to a House of Parliament under any law made by Parliament was disqualified, including the question as to the period of disqualification, would be decided by the President after consulting the Election Commission. The Election Commission might hold any inquiry for this purpose as it deemed fit. The decision of the President in this respect was final.

The Constitution (Forty-fourth Amendment) Act, 1978, omitted Article 103 as inserted by the one restoring the original position. It now provides that the question whether a member has become subject to any of the disqualifications mentioned in Article 102 (1) shall be referred to the decision of the President and his decision shall be final. But before giving any such decision, the President shall obtain the opinion of the Election Commission and act according to such opinion.

The Union Constitution Committee had recommended a term of four years for the House. The Drafting Committee accepted the opinion of de Valera, and changed it into five years. The Draft Constitution in a footnote explained the justification for this change. It said, "The Committee has inserted 'five years' instead of 'four years' as the life of the House of the People as it considers that under parliamentary system of government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years for effective work which should be too short a period for planned administration."

THE SPEAKER

Office of the Speaker

The House elects its own Speaker from among its members to preside over its sittings and conduct its proceedings. The Speaker vacates his office if he ceases to be a member of the House. He may at any time resign from his office or may be removed on a resolution passed by a majority of all the then members of the House. Fourteen days' notice for moving such a resolution is required to be given. The Speaker does not vacate his office on the dissolution of the House; he continues in office until immediately before the first sitting of the reconstitued House after the dissolution.

30. Inserted by the Constitution (Sixteenth Amendment), Act, 1963. The form of an oath or affirmation is :
"I, A. B., having been nominated as a candidate to fill a seat in the Council of States (or the House of the People) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law establilshed and that I will uphold the sovereignty and integrity of India.

The Constitution also provides for the office of the Deputy Speaker and he performs the duties of the Speaker when the latter is absent or while the office of the Speaker is vacant. In Britain the Speaker is indispensable and without him the House can not meet. In India, on the other hand, the Constitution definitely provides, that while the office of the Speaker is vacant the duties of the office shall be performed by the Deputy Speaker. And if the office of the Deputy Speaker, too, happens to be vacant, then, the duties of the office of the Speaker shall be performed by such member of the House, as the President may appoint for the purpose. When both the Speaker and the Deputy Speaker are absent from any sitting of the House one of such members as may be determined by the Rules of Procedure of the House acts as Speaker. The Rules of Procedure and Conduct of Business in Parliament, 1950, provide that at the commencement of the Parliament or from time to time as the case may be, the Speaker nominates from amongst the members of Parliament a panel of not more than six chairmen any one of whom may preside in the absence of the Speaker and the Deputy Speaker when so required by the Speaker or in his absence by the Deputy Speaker. If none of the chairmen of the panel be available, the House may choose one of its members to act as Speaker. Neither the Speaker nor the Deputy Speaker is to preside while a resolution for his own removal is under consideration, although he is entitled to be present, speak in and otherwise to take part in the proceedings of the House. He shall also have the right to vote but only in the first instance on such resolution or on any other matter during such proceedings. But he does not exercise a casting vote in the case of an equality of votes. [31]

The Constitution gives to the Speaker only a casting vote to be exercised in the case of equality of votes. This provision incorporates the British convention that the Speaker of the House of the Commons does not vote except in case of a tie. But the British Speaker usually endeavours to give the casting vote in such a way that it does not make the decision final, thereby extending to the House another opportunity to consider the question.

The Constitution provides that the Speaker and the Deputy Speaker shall receive such salaries and allowances as may be determined by Parliament and they are charged on the Consolidated Fund of India.

31. Article 96 (2).

Position of the Speaker

The office of the Speaker is of much dignity, honour and authority. Like the Speaker of the British House of Commons, the Speaker of the House of the People (Lok Sabha) interprets the will of the House and speaks for it as well as to it. He is the custodian of the dignity of the House and an impartial arbiter in its proceedings. Speaking in the Constituent Assembly of India (Legislative), on March 8, 1948, on the occasion of the unveiling of the portrait of the late V.J. Patel, the Prime Minister observed : "Now, Sir, specially on behalf of the government, may I say that we would like the distinguished occupant of this Chair now and always to guard the freedom and liberties of the House from every possible danger, even from the danger of executive intrusion. There is always that danger—even from a National Government that it may choose to ride roughshod over the opinions of a minority, and it is there that the Speaker comes to protect each single member, or each single group..... Vithalbhai Patel....laid the foundations of those traditions which have already grown up round the Chair.....I hope that those traditions will continue, because the position of the Speaker is not an individual's position or an honour done to an individual. The Speaker represents the House. He represents the dignity of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's liberty and freedom. Therefore, it is right that that should be an honoured position, a free position and should be occupied always by men of outstanding ability and impartiality.'

Vithalbhai Patel may be regarded as the first Speaker in India, though his official designation was the President of the Legislative Assembly, who laid the foundations of the office by following the British traditions. Immediately after his election to the Chair in 1925, he declared himself a no party man and rigidly abstained from any kind of political activity. He had established such a firm reputation as a Speaker and his position was so unchallenged that in spite of the many remarkable rulings he gave which were not to the liking of the Government of the day he was unanimously elected to the Chair both by the official and non-official members of the Assembly of that day. And when the urge to participate in the Civil Disobedience Movement of 1930 came Patel resigned from his office. But the

Congress was the first to violate the conventions associated with the office of the Speaker in Britain and so scrupulously observed by Vithalbhai Patel. Mohammed Yakub succeeded Patel, but he was there only for a session. Ibrahim Rahimtoola, who succeeded Yakub soon after his election to Chair, resigned for reasons of health. Then, came Shanmukham Chetty. But at the next General Election, Shanmukham Chetty was opposed and defeated by the Congress candidate. Since then, the retiring Speakers have always been opposed in the General Election and the Speakers themselves, till the election of N. Sanjiva Reddy, retained their active party affiliations. On May 17, 1967 when Reddy was elected Speaker of the Fourth House of the People, he observed, "My office requires of me to be impartial and judicious in the conduct of my work. I can assure you with all the force at my command that I will try to live up to this requirement and maintain the high traditions set by my predecessors. As a necessary corollary to this resolve, I resign my membership of the party (Congress) to which I had the honour to belong for 34 years. So long as I occupy this Chair it shall be my endeavour to see that all sections of this House get an honest impression that I do not belong to any party at all." When Gurdial Singh Dhillon was elected Speaker in August 1969, he resigned from the Congress Party in Parliament but continued to be a member of the Congress Party.

N. Sanjiva Reddy resigned from the Speakership in 1969 and was nominated the Congress candidate for the Fourth Presidential election. Reddy was again elected the Speaker of the Sixth House of the People as a Janata Party candidate. But this time he did not resign from his party. He took, on the other hand, active part in the party politics. Reddy disclosed the mind of his Party when he told the newsmen at Hyderabad on April 9, 1977 that the Forty-third Constitutional Amendment Bill, which sought to reduce the term of the House of the People and the State Assemblies to five years, was introduced in Parliament with the Presidential election in mind. He also said that the Bill was introduced to "respect the feeling of Mr. Jayaprakash Narayan who wanted the States also to go to polls.[32] Addressing a public meeting at Tirupati on April 12, 1977, Reddy asked the Janata Party workers to find out what was wrong with their campaigning in the South. He asked the rural youth, especially the educated, to tour the villages and explain to the people why the Janata Party was voted to power in the North and how the unity of the country should be preserved. "There is no question of North versus South in elections," he added.[33]

The Congress Working Committee in a resolution determined that the Speakers, both the States as well at the Centre, should keep back from Congress election. But this decision of the Working Commute did not imply that they could remain members of the Congress Party. This point was further made clear by G.V. Mavalankar, Speaker of the First Lok Sabha. Speaker maintained, the speaker in India is not today absolutely out of the political arena as the speaker of the House of Commons though with very extensive limitations on his activities. He may continue to be a member of his Party, but he should not take part in the affairs of the party, particularly in regard to matters which are likely to come before the House for discussion and decision. We have also considered it proper that he should not take sides in public controversies in respect of matters likely to come before the House. In short, he should not identify himself with any propaganda or express any opinions which are likely to embarrass his position as the presiding authority or is likely to create an impression that the Speaker is a partisan."

Mavalankar admitted that the logical corollary of the Speaker's position in Britain is that his seat is not contested in the General Election and he is elected Speaker so long as he wishes to be so elected irrespective of his party affiliation. But "with the present state of political consciousness of public life in India," Mavalankar added, "it is too much to expect that people with different ideologies will all respect the convention of not contesting the election of the Speaker and it is this aspect which very seriously affects the adoption in toto of all British conventions in respect of the office of the Speaker."[34]

32. *The Sunday Standard*, New Delhi, April 10, 1977.
33. *The Statesman*, New Delhi, April 15, 1977.
34. More, S.S., *Practice and Procedure of Indian Parliament*, p. 79.

Mavalankar considered the British precedent an ideal to be reached in course of time. [35]

Mavalankar followed the middle course between the two schools of thought in India; the new school which urged the impartiality of the Chair does not depend on the nature of the Speaker's outside activities and accordingly, did not accept the British model of absolute severance from politics, and the older orthodox school which insisted on the adherence to the British model and emphasised that impartiality demanded sincere attempts to break previous political connections. According to Mavalankar's middle course, the Speaker may not be a partisan yet he still remains a party man and is the choice of his party. But every party man has his own prejudices and the prejudices of a promoted politician are, indeed, very strong. The Chair, under such circumstances, cannot command that much reverence as it does in Britain for its impartiality. The result was the first motion of no-confidence moved against the Speaker on December 18, 1954. It was condemned by the Prime Minister as "vicious" and he described the Opposition responsible for it as "incompetent and frivolous." The motion was lost on a voice vote, but it had a lesson. It gave a setback to the dignity of the Chair and, as such, to the dignity of Parliament.

The Socialist Member of Parliament, Madhu Limaye, gave a notice, on March 3, 1975, of a no-confidence motion against Speaker Gurdial Singh Dhillon "for having lowered the prestige of the office." It was also signed by Piloo Mody (BLD) and S.N. Mishra (Congress O). Listing thirteen charges against the Speaker, Madu Limaye, *inter alia,* accused Dhillon for having wilfully abolished the right of the members to raise points of order and having "continually and arbitrarily" disallowed, in total violation of the rules, questions highly embarrassing to the Government. It was also alleged that the Speaker constantly interrupted even those members who were speaking with his permission and not letting them complete their submissions.

The notice was subsequently withdrawn for reasons best known to Madu Limaye and his associates. But the result of such motions of no confidence against the Speaker and especially charging him for having lowered the prestige of office by partiality towards the Government is disastrous. Such ugly scenes, as disorderly defiance of Speaker's rulings, interruptions by raising irrelevant points of order and staging a walk-out had become a common feature of the proceedings of Parliament prior to the Sixth House of the People elections. Speaker Hukam Singh, addressing a conference of Presiding Officers on October 29, 1966, stressed the need for finding a "permanent and lasting" solution of the problem of "repeated disorders" in Parliament and State Legislatures. [36] Satyanarayan Singh, Union Minister for Parliamentary Affairs, called for a "Pathological diagnosis" of the causes of disorderly scenes in India's Legislatures[37] President Giri, in his inaugural address to the Speakers' Conference in New Delhi, in December 1970, raised the question whether any useful purpose was served by framing codes of conduct for legislators. "No member of Parliament or of a legislative body", he said "can hope to impress his constituents by some act of his or some sensation" which makes headline news. But the majority of the Legislators, the President observed, do not share this view. "In any event", he further added, "there is no evidence that any member has in the slightest degree impaired his career by being the storm centre of disorderly scenes in Parliament or a State Legislature. Otherwise it is difficult to see why noisy interruption of parliamentary proceedings is becoming more and more frequent after e ach successive election.[38] The Speaker's continued association with his party is an undeniable and a potential cause

35. The Conference of the Presiding Officers of Legislative bodies held at Trivandrum in July-August, 1951, passed the resolution: "The conference is of the opinion that it is desirable in the interests of the development of free democratic institutions in this country that following the practice of the British House of Commons a convention should be established to the effect that the seat from which the Speaker or the Chairman stands for election should not be contested.....The necessary corollary of the full establishment of this convention would be that the Speaker or Chairman would not take part in any party politics. The conference feels that such convention is a healthy one and its growth should be encouraged." *Journal of Parliamentary Information,* Vol. I, p. 141. The National Committee of the Samyukta Socialist Party decided on October 17, 1968 that the Party would not oppose, in any election, a Speaker who had immediately on assumption of office renounced his Party affiliation. It called on other political parties to follow suit. *The Tribune*, Ambala Cantt. October 19, 1968.

36. *The Hindustan Times,* New Delhi, October 29,1966.

37. Presidentail Address delivered at the Fifth All India Whips' Conference, Bangalore, January 3, 1966. *The Hindustan Times,* New Delhi, January 5, 1966.

38. *The Times of India*, New Delhi, December 30, 1970.

of such a vicious circle. When sitting Speakers, as Gurudial Singh Dhillon can be switched over to ministerial posts, there is ample justification for lack of confidence in the impartiality of the Speaker and distrust thus caused breeds disorderly scenes and unruly members.

But Balram Jakhar, Speaker of the Seventh House of the People, excelled his mentor Gurdial Singh Dhillon. *The Tribune* reported[39] that the Speaker joined five Congress (I) leaders from Punjab[40] on April 30, 1980 in Delhi "to screen the list of seekers of the party tickets" and in doing so had "violated" one of the "most sacrosanct conventions of the democratic form of government." It caused not a few eyebrows to be raised among veteran parliamentarians and sparked a controversy in the whole country. Despite the rebuttal of Darbara Singh, the Punjab Chief Minister, Gurdial Singh Dhillon and Satpal Mittal, two other participants in the meeting, confirmed the Speaker's presence and sought to make it a non-issue by adding that Jakhar was there "merely" for consultation in regard to the party candidates for the Assembly segments forming his parliamentary constituency. Once the Speaker was elected on party ticket, Dhillon argued among other things, "the party's claim to utilize his services was natural."[41] Whatever be the justification, Jakhar's presence in a party meeting for the selection of party candidates for the Assembly poll is a matter of serious concern for the future of the parliamentary system in which the Speaker occupies a key position. The image of his independence and impartiality is shattered and what happens everyday on the floor of the House is its clear testimony.

The House of the People (Lok Sabha), on April 15, 1987, rejected by a voice vote the no-confidence motion against Speaker Balram Jakhar. The motion specifically brought out the charge that the Speaker had barred Parliament from discussing vital constitutional and procedural issues and the burning problems of the day; the obvious reference was to his ruling of March 19, 1987 as a result of which members were not permitted to raise a discussion on the relationship between the President and the Council of Ministers under Article 78 of the Constitution. The Speaker had also ruled that even during the discussion on a motion of censure or no-confidence directed against the Council of Ministers "the relationship between the President and the Prime Minister or the Council of Ministers, including the advice tendered or exercised or correspondence exchanged between them cannot be allowed to be brought in to influence the debate." Madhu Dandavate, Janata member, described during the acrimonious discussion of the motion of no confidence the ruling of the Speaker as a piece of "misrepresentation of the Constitution, rules of the House and precedents." Such an accusation, whether legally correct or not, certainly reflects on the dignity and impartiality of the Speaker and erodes his authority.

In the Eighth Lok Sabha no Party commanded a majority. But the Janata Dal and its National Front Allies could count on the avowed support of the Left Parties and the BJP and were thus assured a working majority in the House. Rabi Ray was elected the Speaker, though much against the wishes of V. P. Singh. It goes to the credit of Rabi Ray that he did act with exemplary impartiality during his all too brief term as Speaker. He was even called upon to give a ruling on the question of disqualification of certain members who violated the anti- defection law by crossing the floor which he did with objectivity.

The election of Shiv Raj Patil as Speaker of the Tenth Lok Sabha without a contest was rather dramatic as his success was assured the moment the Bhartiya Janata Party, the main Opposition Party in the Lok Sabha with a strength of 117, expressed itself in favour of support to his candidature. From the beginning the Congress (I) was keen that its nominee should occupy the key post notwith- standing its minority status. Yet it did not make any serious effort to reach consensus on this matter, particularly with the Janata Dal and the Left who had all along persisted with the candidature of Rabi Ray. Having come to realise that Ray did not stand a chance of making the grade the National Front finally decided not to press its claim describing the understanding between the Congress and the BJP as a clandestine arrangement and an opportunistic idea. It was the contention of the Prime Minister P .V. Narasimha Rao, that it was imperative for the Congress (I) to bag the Speakership "if the Gov-

39. *The Tribune*, Chandigarh, May 3, 1980.
40. The five leaders were : Giani Zail Singh, Darbara Singh, Gurdial Singh Dhillon, Buta Singh and Sat Pal Mittal. Mrs. Gandhi was "present at the meeting throughout."
41. Gurdial Singh Dhillon's statement issued on May 4, 1980 from Amritsar, The Tribune, Chandigarh, May 5, 1980.

ernment is to run" implying thereby that a smooth functioning was next to impossible if the post went to a candidate belonging to some other party.

In fact, there has been no precedent of an Opposition candidate occupying the office of Speaker so far and the ruling Party must have felt that it should not give up its right if it even meant making certain compromises in achieving the desired goal. This indeed was the refrain of the Prime Minister when he categorically asserted that they had to brush aside all inhibitions and do everything that was needed to ensure that the ruling Party candidate was elected Speaker whatever the cost might be. Two important results emerge from this. The first is that unlike Britain, Speakership in India is a post not an institution and, secondly, the post of a Speaker is partisan institution as its incumbent must be a partyman.

Powers and Functions of the Speaker

The functions and authority of the Speaker in India resemble more or less to those of the Speaker of the British House of Commons. He speaks for the House and to the House and, as such, is the principal spokesman of the House. Messages on behalf of the House and to the House are sent or received with the authority of the Speaker. All Bills passed by the House are authenticated by his signatures before they are sent to the Council of States for its consideration or the President for his assent. He receives all petitions, appeals, messages and documents addressed to the House and all orders of the House are executed through him.

Communications from the President to the House are made through the Speaker. When a message from the President, whether with respect to a Bill pending in Parliament or otherwise, is received by the Speaker, he reads it to the House and gives necessary directions in regard to the procedure to be followed for the consideration of matters referred to in the message, and in giving those directions he may suspend or vary those to such extent as he may deem necessary. Similarly, all communications from House to the President are made through the Speaker in the form of a formal address after a motion has been made and carried by the House. [42]

The Speaker presides over the sittings of th House and conducts its proceedings. He decides who shall have the floor and all speeches and remarks are addressed to the Chair. He proposes and puts the necessary questions and announces the results. In consultation with the Leader of the House, the Speaker determines the order of business, the time to be allotted for different kinds of business, and sees that it is taken up and finished according to the Time Allocation Orders. He is the final judge to decide on the admissibility of questions, resolutions and motions. He must also certify, under Article 110 of the Constitution, whether a Bill is a Money Bill or not. Every Money Bill, when it is transmitted to the Council of States is so certified by him, as also when it is presented to the President for his assent. The Speaker does not vote except in the case of a tie.

The Speaker does not take part in the deliberations of the House except in the discharge of his duties as the presiding officer of the House. He may, however, either on a point of order, or on a request made by a member, address the House at any time on a matter under consideration with a view to help and aid members in their deliberations. [43] Such instances are rare, [44] but whenever he addresses the House those expressions are not to be taken in the nature of a ruling.

The Speaker exercises his powers and functions partly under the Constitution and partly under the Rules of Procedure of the House. He has also the power to deal with all matters which are not adequately provided for in the Rules of Procedure. He has, in fact, done so quite frequently and now all such precedents have been embodied in book form as Directions of the Speaker and are made available to the members of the House. The Speaker maintains perfect order and decorum in the House and has wide powers to check disorder, irrelevance and unparliamentary language or behaviour. A member who shows disrespect to the Chair by not obeying his order may be punished by suspension from the service of the House, and any reflection on the action or character of the Speaker for his ruling is a grave breach of order which will receive immediate and serious reproof. If the Speaker is of the opinion that a word or words used in the debate are defamatory or indecent, or

42. Rule 47. A common example is the Motion of Thanks adopted in the House on the President's address to the two Houses of Parliament assembled together. Such a motion is conveyed by the Speaker to the President.
43. Rule 360.
44. For instance, Speaker, Mavalankar elucidated a procedure which he desired the House to follow in regard to the debate on the report of the States Reorganisation Commission. Lok Sabha Debates (II), 9-12-1955 and 14-12-1955.

unparliamentary or undignified, he may, in his discretion, order that such word or words be expunged from the proceedings of the House.[45] He may direct any member guilty of disorderly conduct to withdraw from the House, or adjourn[46] or suspend the business of the House in case of grave disorder. However, when strong feelings exist or are aroused in the House, there are times when the Chair can appropriately be deaf or indeed blind."[47]

The Speaker announces the closure of debates, is the guardian of the privileges of the House and protects the interests of the minorities. He also protects the encroachments by the Government. When Ministers tend to encroach upon the rights of the members or refuse to answer questions, or circumvent the answers, or do not give sufficient information, it is, then, to Mr. Speaker that the members appeal to safeguard and enforce their rights against the Executive.[48] Various powers are conferred on the Speaker in relation to questions to Ministers. Though the guiding principles regarding admissibility of questions are laid down in the Rules of Procedure, their interpretation is vested in the Speaker. He may also vary the Question Hour, waive the rules relating to notice of questions, and permit a question to be asked at short notice if it relates to a matter of public importance and is, in his opinion, of an urgent character. Provision has been made in the Rules for half-an-hour discussion on matters arising from the answers to questions provided they are of sufficient public importance, but the decision as to whether a matter conforms to the requirements of the relevant Rules rests with the Speaker.

The Speaker also decides about the admissibility of resolutions and motions. He decides whether a motion expressing want of confidence in the Council of Ministers is in order, and whether a "cut" motion is or is not admissible under the Rules. His consent is required to a motion to adjourn the House for the purpose of discussing a definite matter of public importance, to a motion for discussing a matter of general public interest, and to any motion for adjourning the debate on a Bill. His consultation is also necessary for the presentation of petitions to the House, for calling the attention of a Minister to any matter of urgent public importance and for any member to point out a mistake of accuracy in a statement made by a Minister or any other member of the House. Further, the consent of the Speaker is required by a Minister desiring to make a personal statement explaining the reasons of his resignation from his office. The Speaker's permission is likewise necessary if a member of the House wants to make a personal explanation. He can refer any matter to the Privileges Committee.

But the chief function, and an arduous too, of the Speaker relates to the judicious conduct of debates. He fixes a time limit for speeches, selects amendments to a Bill or resolution to be discussed by the House. The Speaker is, in fact, "lord of the debate." He must see that the debate centres on the main issue before the House and members do not wander accidentally or deliberately, in the realm of irrelevance. Then, there are constant appeals to him for his ruling on point of procedure and his ruling is final which must be accepted without demur. They constitute precedents which are collected for future guidance and cannot be questioned on a substantive motion. It is said of the Speaker of the British House of Commons that the Prime Minister "can do nothing right, but Speaker can do nothing wrong." This is, however, not true in India. Defiance of the rulings of the Speaker is rule now rather than an exception. When, Speakers do not eschew party connections and are active participants in the affairs of the party, the respect and obedience which the

45. Rules 353, 356 and 380.

46. The Speaker adjourned the House on February 17, 1981 when some Congress (I) and Lok Dal members pushed and pummelled each other, were engaged in scuffles and exchanged a few blows.

47. Kaul, M. N., and Shakdhar, S.L., *Practice and Procedure of Parliament* (1972), p. 101. Also refer to the observations of the Speaker in the British House of Commons, *House of Commons Debates*, 1-2-1972, c. 239.

48. The Speaker expressed his unhappiness in the House on November 16, 1971 at the spate of Ordinances issued by the Government during the brief inter-session period of two months. He observed that he would invite the attention of the Government to the need for justifying the "emergency and urgency" to promulgate these Ordinances. *Indian Express*, New Delhi, November 17, 1971. Speaker Balram Jakhar also expressed his concern on the Seventeen Ordinances issued in between the period of the close of the Budget Session and the Winter Session in November 1980.

Chair should command disappears with loss of faith in the independence and impartiality of the Speaker.

The Speaker appoints Chairmen of all committees of the House. "The Speaker", writes S. L. Shakdhar, "is the supreme head of all Parliamentary Committees set up by him or by the House. He issues directions to the Chairmen in all matters relating to their working and the procedure to be followed. He guides them holding periodical consultations with the Chairmen and the members. The Speaker reads all reports of the Committees and keeps in touch with their activities. All difficulties and matters of importance are referred to him for guidance and advice."[49] He sees that any notice issued by a Committee or a minute of dissent of a member does not contain any words, phrases or expressions which are argumentative, unparliamentary, irrelevant, verbose or otherwise inappropriate. He may, accordingly, amend it, if deemed necessary, before circulation. The Speaker himself is the *ex-officio* Chairman of some of the Committees of the House such as the Business Advisory Committee, Rules Committee and the General Purposes Committee.

The Speaker presides over the joint sitting of both Houses of Parliament, whenever the President calls it in the event of the disagreement between the House of the People and the Council of States and all the rules of Procedure operate in regard to the joint sitting under his directions and orders. However, if at any sitting of the House of the People a resolution for the removal of the Speaker from his office is under consideration, he is not to preside at that sitting. The Constitution also prescribes certain of his duties : he is empowered to adjourn the House or to suspend its sitting in the event of the absence of a quorum; and he is authorised, in his discretion, to permit any member of the House who is unable to express himself in Hindi or in English to address the House in his mother tongue . He has also the power to recognise parties and groups in the House of the People.

The Speaker is the *ex-officio* President of the Indian Parliamentary Group, which in India functions as the National Group of the Inter-Parliamentary Union and the Main branch of the Commonwealth Parliamentary Association. He nominates, in consultation with the Chairman of the Council of States, personnel for various parliamentary delegations to foreign countries. He may lead these delegations himself. The Speaker is also the Chairman of the Conference of Presiding Officers of Legislative Bodies in India.

The House of the People has its own Secretariat and the conditions of service of persons appointed to the secretarial staff of either House of Parliament are regulated by law of Parliament. The secretariat staff of the House functions directly under the control of the Speaker and is responsible to no other authority. The Speaker also controls the premises of the House and his authority within and without the House is undisputed. He regulates admission of "strangers" and Press correspondents to the galleries and other precincts of the House. Visitors and Press correspondents, after their admission to the galleries, are subject to the discipline and orders of the Speaker. In the event of breach of his orders he may punish them by stopping their admission either for a definite or an indefinite period or, in serious circumstances, involving contempt of the House or its members or the committees, censure them or, in extreme cases, commit them to prison. Summons to offenders are issued under his authority and it is sufficient for the courts if his orders merely state that the person is required to appear before the House on the charge of contempt of the House or a breach of privilege.

The Speaker is, thus, the impartial custodian of the rights of the members of the House. For him the humblest back-bencher is not less than a member, nor is the greatest Minister more than a member. He seldom speaks, but when he does, 'he speaks for the House not to it." The essence of his impartiality lies in the way he maintains an atmosphere of fair play by ensuring that the Opposition have an opportunity to express their views and criticism, yet at the same time, seeing that there is no parliamentary obstruction to hinder the Government in the task of governing the country. The powers vested in the Speaker are intended to enable him that the House functions smoothly and it transacts its business effectively, efficiently and expeditiously. The Speaker would not, therefore, exercise his powers arbitrarily or in such manner as to prevent the House from functioning as the Speakers of the West Bengal and Punjab Legislative Assemblies did in 1967-68. The Page Committee, while commenting upon the duties and responsibilities of the Speaker and his relations with the House,

49. Lal, A.B. (Ed.), *The Indian Parliament*, p. 34.

observed, "The fundamental principle is that the House, subject to the provisions of the Constitution, is sovereign in the matter of its own rules of procedure and conduct of business.....Hence whatever powers have been conferred by the rules on the Speaker are intended to serve one purpose, *i.e.,* the House should be enabled to function at all times in the interest of the country and the powers conferred on the Speaker, should be used by him in the interest of the House."[50] The Speaker must, therefore, possess high and varied qualities of character and intellect. He should be able, vigilant, thoroughly conversant with he Rules of Procedure and precedents, imperturbable, tactful and should possess a sense of humour to relieve not only tensions in the House but also at times to relieve its monotony. This is a gift which may be either natural or cultivated, but it is certainly a weapon of great potency with a wise and capable Speaker. Addressing the 52nd Annual Con- ference of the Speakers of legislative bodies of India in October 1986, Balram Jakhar, Speaker of the Lok Sabha, likened the Speakers to wild horses whose rider was the State Legislature. "They would want to tame you, but never get tamed. For if you do so, you would be dragged all along." The Speaker should be "firm with a smile."

The Thirty-ninth Constitution Amendment Act, which has since been rescinded, intended to protect the Speaker, because of the dignity of the office that he occupied, from the jurisdiction of the courts in respect of all disputes arising out or in connection with his election to the House of the People.

FUNCTIONS OF THE HOUSE

India is a Union of States and, accordingly, all legislative power is divided between the Union and the States. Parliament has exclusive power to make laws with respect to matters enumerated in the Union List—List I in the Seventh Schedule to the Constitution. With respect to the Concurrent List—List III— both Parliament and State Legislatures have concurrent powers. Subject to the provisions of the Constitution, Parliament has the power to make laws for the whole or any part of India whereas the jurisdiction of State extends to the whole or any part of the State. No law made by Parliament shall be deemed to be invalid on the ground that it will have extraterritorial operation. When a Proclamation of Emergency is in operation, Parliament has the power to make laws for the whole or any part of the territory of India with respect to any matter enumerated in the State List— List II— though on the expiry of six months after the Proclamation has ceased to operate such laws cease to have effect. Parliament has also the power to legislate for two or more States by their consent and it is open to other States also to consent to or adopt such legislation. In case of repugnancy between the law of the Union and the law of a State, the former shall prevail. Residuary powers rest with the Union.

The entries in the Union, Concurrent and State Lists are only legislative heads or fields of legislation and, as such, they demarcate the area over which the appropriate legislature can operate. From the classification of matters into the three Lists, competence of the House of the People has been questioned from time to time on particular matters before the House. It is the accepted practice in the House of the People that the Speaker does not give any ruling on a point of order raised whether a Bill is constitutionally within the competence of the House. The House also does not take a decision on the specific question of *vires* of a Bill.[51] The members express their views in the matter and advance arguments for and against the *vires* for the consideration of the House and the issue is decided accordingly. There have, however, been occasions when the Speaker leaving the ultimate decision on the matter to the House has expressed his own views on the *vires* of Bills. In order to help the House and the Speaker to decide disputed or complicated legislative proposals before the House, the Attorney-General may address the House on the suggestion of the Speaker or the House itself and give his opinion on the legal and constitutional aspects involved therein.

Legislative Functions

The process of making laws is the business of Parliament as a whole; President, the Council of States and the House of the People.

The House can by itself do nothing, although the actual powers of the President and the Council of States are subject to limitations. A non-Money Bill may originate in any of the two Houses and it must be passed by both Houses if it has to become law. The House of the People, unlike the British House of Commons, has no

50. As cited by Kaul, M.N., and Shakdhar, S.L., *Practice and Procedre of Parliament,* p. 103.
51. Kaul, M. N., and Shakdhar S. L., *Practice and Procedure of Parliament,* p. 473.

means to over-rule the Council of States. In case of disagreement between the two Houses or if more than six months elapse from the date of the receipt of the Bill by the other House without the Bill being passed by it, the President may sommon a joint sitting of both the Houses. If at the joint sitting the Bill is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed to have been passed by both Houses of Parliament. Here lies the supreme position of the House of the People. The will of the House is bound to prevail at the joint sitting on account of its numerical strength.

Financial Functions

"Who holds the purse, holds the power," wrote Madison in the *Federalist.* It is through the control of the nation's purse that the House enjoys real supremacy over the Council of States. The Constitution provides that a Money Bill shall not be introduced in the Council of States. It should originate in the House of the People and when it passes therefrom, it is transmitted to the Council of States for its recommendations. The Constitution further requires that the Council of States should return the Bill to the House with or without its "recommendations" within fourteen days from the date of the receipt of the Bill by the Council. If the House accepts any of the "recommendations" made by the Council, the Bill is deemed to have been passed by both Houses of Parliament with those amendments. If the House does not accept the "recommendations" of the Council, the Bill is deemed to have been passed by both Houses of Parliament in the original form as passed by the House of the People. If a Bill passed by the House and transmitted to the Council is not returned within fourteen days of its receipt, it is deemed to have been passed by both Houses of Parliament, after the expiry of fourteen days, in the form in which it was passed by the House of the People. The Council of States can only delay the enactment of a Money Bill for a period of fourteen days. Demands for grants are not submitted to the Council of States. The sanctioning of expenditure is the exclusive privilege of the House of the People.

Electoral Functions

The elected members of the Both Houses of Parliament form a part the Electoral College for the election of the President of India; the other part of the Electoral College being the Elected members of the Legislative Assemblies of the States. The Vice-President is elected by the members of an Electoral College consisting of the members of both Houses of Parliament. In the process of election of both the President and the Vice-President the House of the People enjoys co-equal powers with the Council of States.

Controlling the Executive

But the most important function of the House is that of controlling the executive. The Constitution makes the Council of Ministers collectively responsible to the House of the People and the responsibility of the Council of Ministers to the House involves a constant control of the House over the Government; control and responsibility go together. Responsibility of Government means its resignation from office whenever the policy of the Government proves fundamentally unacceptable to the House. An obligation, therefore, rests on the House to exercise a day-to-day scrutiny over the activities of the Government in such a way that fundamental disagreement between the Executive and the representatives of the people will be clear and manifest. If the actual and possible mistakes of the Government were not apparent, the Government might become irresponsible. Control by the House prevents irresponsibility since Ministers are constantly conscious of the fact that they will be called to account.

The House maintains its control in two ways. The first is the constant demand in the House for information about the actions of Government. The second is the criticism that is constantly aimed at the Government in the House. These two methods are closely related to each other and take various forms. The most effective instrument by which the House seeks information from the Executive is the oral or written questions. Any member of the House may, by following prescribed Rules, direct questions at Ministers and the Ministers at the beginning of each sitting of the House devote almost an hour to answering questions that have been put to them. The institution of asking questions is as highly developed in India as it is in Britain and is prominently distinguished from some of the Dominion countries, like Austaliia.[52] It is generally the most

52. Sir Anthony Eden, in his tour of the Commonwealth, is said to have felt more at home in the Indian Parliamment's Question Hour than he had been in the Australian Parliament. Morris-Jones says, "While the form of the initial question is firmly disciplined, the freedom given to the putting of supplementaries is fairly large and ministers cannot use escape routes on too many occasions." *The Government and Politics of India*, p. 197.

interesting part of the proceedings of the House and it provides the time when a member can make his mark and when Ministers, too, can make or mar their reputations. A member may also move for obtaining returns or supplying information on matters of public importance.[53] Information may,again, be obtained by the House regarding the administration by appointing Parliamentary Committees.

The House is also a debating assembly. "A society," writes Laski, "that is able to discuss does not need to fight, and the greater the capacity to maintain interest in discussion, the less degree there is of an inability to effect the compromises that maintain social peace."[54] The most important function of the Opposition is to discuss and criticize matters of administration and policy making and to make the Government to defend its intentions and practices. The best opportunity for the Opposition to criticize governmental policy as a whole is when it debates the reply on the Address of the President to Parliament. Another opportunity is when public finance, more especially proposals for expenditure, are under discussion. At this stage, the action of every individual Minister and his Ministry is under review. Demands for supplementary estimates similarly offer an opportunity for criticism. It must, however, be said that till March, 1977 there was no well-organised strong Opposition to create an effective stir in Government by its criticism. The Janata Government recognised the worth of responsible Opposition within the framework of a parliamentary system and accorded to the Leader of the Opposition the status of a Minister of the Cabinet rank with all the privileges attached to the office. But after January 1980 the Opposition was in complete disarray and there was no cohesion among the various Opposition parties and groups to present a united front and arrest the vagaries of the Government effectively and in a responsible spirit. Proper restraint on the actions and policies of the Government is not possible under the circumstances, except the pre-planned obstructionist strategy followed by walk-outs.

In addition to these regularly scheduled debates, any member of the House may, after the notice and subject to the rules governing it, move a resolution expressing lack of confidence in the Council of Ministers. Motion for a vote of no confidence is really a crucial occasion in the life of the Government as it decides its fate. So long as a Government can command a comfortable majority,[55] it is not possible for such a motion to get through, still it creates embarrassment the ranks of the Ministry and agitates public opinion.[56] The most normal occasion for the criticism of the Executive is debate on a motion of adjournment. A member may, during a sitting, move the adjournment of the House for discussing a definite matter of urgent public importance. If the Speaker admits the motion, then, a full debate on the issue is held. The policies and actions of the Government are exposed by the Opposition and its lapses highlighted. The Government stoutly defends with reasoned arguments substantiated by authentic official material. If the Government fails to convince the House it must face the consequences.

There is another kind of adjournment motion and it may be called the emergency adjournment motion. It is intended to raise discussion on matters of urgent public importance for a short duration and for calling attention of the Government. No formal motion is allowed. What the Rules require is that a member wishing to raise a debate should give a notice to the Secretary of the House clearly and precisely specifying the matter to be discussed. The notice must be supported by at least two other members. If the Speaker admits the notice, he will fix a day, in consultation with the Leader of the House, for discussion. The duration of the debate does not exceed two and a half hours. What is important to note here is that even a Government which commands an overwhelming majority in the House cannot prevent the ventilation of an important grievance and the Constitution gives to every member freedom of speech in Parliament. The Half-an-Hour Discussion on matters arising out of questions, also, affords opportunities for ventilating grievances. Other opportunites for raising debates include the moving of resolutions and No-Day-Yet-Named motion.

53. As in the case of Sirajuddin and Co., Fairfox and Bofors gun deal cases in March-April 1987.
54. Laski, H., *Parliamentary Government in England,* p. 149.
55. Morarji Desai's Government resigned in July, 1979 on reduced strength of the Party when the vote of confidence moved by Y. B. Chavan was under discussion.
56. Not infrequently the Opposition behaves irresponsibly as it happened on the motion of no-confidence against the Government in November 1968. The liberty to oppose the Government was fully exercised by Opposition parties, but when the turn came for the leader of the Government (Prime Minister) to reply, Mrs. Indira Gandhi was ruthlessly shouted down. This is tantamount to destroying the values of parliamentary government.

Another device for raising important matters and ventilating whatever has happened and agitating the Members is the 'Zero Hour' practice. It is entirely an Indian innovation and is unknown to the Rules of Procedure and Conduct of Business in the House. Nobody can say how did it originate and acquire the name. But the practice goes back to early 1950 during the tenure of Speaker Hukam Singh. Immediately after the Question Hour and before other business was taken up the Speaker would permit ordinary Members of the House, who otherwise were overshadowed by the presence of a host of veteran parliamentarians, to bring to the notice of the Government important matters and seek redress. The Members, thus, found that their voice counted and began to use the opportunity freely and since it was an interregnum between the Question Hour and the other business to be taken up it came to be known as the Zero Hour.

Originally, it was useful device conducted in an atmosphere of orderly and fruitful proceedings, but soon it declined into a line of disorder, uproar and pandemonium, often unbecoming of Parliament and almost invariably unproductive. On February 17, 1981 the House was adjourned in a state of shock when Congress (I) and Lok Dal Members freely exchanged blows. On August 22, 1978 a Lok Sabha bulletin informed Members that there was no Zero Hour in the Rules of Procedure and Conduct of Business in the House. Anybody desiring to raise a matter of wide public importance had to give appropriate notice under the relevant Rule. "Members are requested not to raise matters without the specific approval and consent of the Speaker." On a Member's plea that it had been the practice of the House and the decision be reconsidered, the Speaker commented, "May I tell you that there is nothing like Zero Hour." Speaker Hegde after consulting leaders of various political parties, offered to substitute five statements each day under Rule 377 after giving due notice to the Speaker and obtaining his consent. That system has worked well. It was, for instance, under Rule 377 in the Monsoon Session in 1979 that the Congress (I) managed to raise the matter of the Desai-Charan Singh correspondence and the related corruption charges, after having tried unsuccessfully to raise it in other forms under other Rules. Consent is given to almost every matter sought to be raised. Despite this outlet for Members' grievances, Zero Hour lives on and thrives amidst uproarious scenes verging on even vilification.

Constituent Functions

The House together with the Council of States has the power to amend the Constitution. A Bill to amend the Constitution may originate in either House and it must be passed by each House of Parliament by a majority of its total membership as well as by a two-thirds majority of the members present and voting. The Constitution, as said before, does not prescribe the method of resolving differences between the two Houses over a proposed amendment of the Constitution. Article 108 relates to the procedure prescribed for resolving the differences over a legislative measure and does not apply to a constitutional amendment.

Miscellaneous Functions

Parliament has the power for the removal of Judges of the Supreme and High Courts on the grounds of proved misbehaviour or incapacity and address for such a removal is required to be passed by each House of Parliament supported by a majority of the total membership of that House and by a two-thirds majority of the Members of that House present and voting. The removal of the Chief Election Commissioner and Comptroller and Auditor-General of India is subject to the same procedure as in the case of Judges. Either of the two Houses may prefer a charge for impeachment of the President. If the charge is preferred by the House, the Council of States investigates to or causes it to be investigated. The impeachment succeeds when the Chamber investigating the charge passes a resolution supported by a two-thirds majority of members present and voting that the charge is sustained. The removal of the Vice-President is only subject to the approval of the House of the People after a resolution to that effect has been passed by a majority of all the members of the Council of States. Approval of both the Houses is necessary at all stages and every time for the continuance in force of a Proclamation of Emergency, under Article 352, Proclamation declaring the failure of the constitutional machinery in a State, under article 356, and proclamation relating to financial emergency, under Article 360, beyond the specified period of time and when its operation is intended to be extended after the expiry of that period. Rules and Regulations made by the various Ministries and Departments under the authority of delegated legislation are approved by both the

Houses. The reports of the Union Public Service Commission, the Comptroller and Auditor-General of India, the Scheduled Castes and Tribes Commission and the Finance Commission are presented to both Houses for their consideration. If the Government makes a proposal to take an appointment out of the purview of the Union Public Service Commission, both the Houses should agree to such an exclusion.

LEGISLATIVE PROCEDURE

The Constitution does not prescribe a detailed legislative procedure. It merely says that a Bill, other than a Money or Financial Bill, may originate in either House of Parliament, and a Bill shall not be deemed to have been passed by Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses. A Bill pending in either House does not lapse if Parliament is prorogued. The dissolution of the House of the People causes the lapse of any Bill which is pending in it or which has been passed by the House but is pending in the Council of States. But a Bill which originated in the Council and is still pending there does not lapse on account of dissolution. When the President has notified his intention to summon a joint sitting of both Houses of Parliament, a subsequent dissolution of the House of the People does not cause the Bill to lapse.

The rest is covered by the Rules made by Parliament. These Rules prescribe an identical procedure in both Houses. A legislative Bill is required to be read three times in each House before it can be deemed to have been passed by both Houses of Parliament. An ordinary legislative measure may be introduced either by a Minister or by a Private member. In the former case, it is known as a Government Bill and in the latter case it is classified as a Private Member's Bill. A Government Bill and a Private Member's Bill both undergo an identical procedure. The three readings of a Bill involve four stages. The first reading relates to the motion to introduce a Bill and on its adoption the Bill is deemed to have been introduced. The Billl is also deemed to have been introduced if it is already published in the *Gazette of India*. The second reading consists of two stages. The first stage constitutes discussion of the principles of the Bill and its provisions generally on any of the following motions :— that it be taken into consideration; that it be referred to a Joint Committee of both the Houses with the concurrence of the Council of States; that it be circulated for the purpose of eliciting public opinion. Second stage in the Second Reading constitutes clause-by-clause consideration of the Bill as introduced or as reported by a Select or Joint Committee, as the case may be. The third reading refers to the discussion on the motion that the Bill (or the Bill as amended) be passed.

The Bill is, then, transmitted to the other House for its concurrence. A message from the originating House signed either by the Presiding Officer or the Secretary is sent to the other House. The message is read in the House and copies of the Bill are laid on the table. Thereafter any Minister may give notice that the Bill be taken into consideration. The subsequent procedure of discussion and amendment is the same as in the originating House. After the Bill is passed by the receiving House, it is sent back to the originating House with amendments if any. If the receiving House passes the Bill in the same form in which it came from the House of its origin, it is presented to the President for his assent. The President may give his assent thereto, or withheld it, or return it for reconsideration of the Houses, with or without a message suggesting amendments. When the Bill so returned by the President has been reconsidered by both the Houses and is again passed by the two Houses with or without amendments and presented to the President for his assent, the President can no longer withhold it, and must give his assent thereto. A Bill, thus becomes law.

If a Bill passed by one House and transmitted to the other is amended by that House, it goes back to the House where it originated. If the House originating the Bill does not agree to the amendment or amendments or makes further amendments to which the other House does not agree, the President may summon a joint sitting of the two Houses. The Speaker presides and the Rules of the House of the People are made applicable at a joint sitting. Amendments can be moved at a joint sitting, but only such amendments are admissible as have been made necessary by the delay in the passage of the Bill, or may arise out of amendments, if any, proposed by one House and rejected by the other. The decision of the Presiding Officer with regard to the admissibility of amendments is final. The Bill is deemed to have been passed by both the Houses if a majority of the members present and voting at joint sitting agree to it.

A Joint session may also be summoned if a Bill passed by one House is rejected by the

other, or if more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it.

Private Members' Bill

Since 1965 the last two and a half hours of the Friday sittings are normally allotted for the transaction of Private Members' Business. Private Members' Business consists of Resolutions and Bills. The Speaker decides which of the two are to be dealt with on a particular Friday. In practice, it means that every alternate Friday is made available for Private Members' Bills, the other Friday being devoted to Private Members' Resolutions.

The Procedure in the case of Private Members' Bill is the same as for Government Bills, except for some special features. The notice for leave to introduce a Bill must be accompanied by a statement of objects and reasons, the recommendation and sanction of the President required for the introduction or consideration of the Bill, memoranda showing the financial effect of the Bill, etc. A notice may be disallowed, if it is not complete in any respect or the Bill is otherwise defective. The Speaker has the inherent power to disallow notice of a Bill, if he thinks that it is not proper to include it in the List of Business. There is a Committee on Private Members' Bills and Resolutions consisting of not more than 15 members nominated by the Speaker for one year. The Chairman is appointed by the Speaker from among the members of the Committee. If the Deputy Speaker happens to be a member of the Committee, he is appointed Chairman automatically. The functions of the Committee are :

(1) To examines every Bill seeking to amend the Constitution before a motion for leave to introduce the Bill is included in the List of business. The Committee since its inception has taken this matter very seriously and laid down certain principles. One of these states that "the Constitution should be considered as a sacred document—a document which should not be lightly interfered with and should be amended only when it is found absolutely necessary to do so.....Such amendments should normally be brought by government."

(2) To examine all Private Members' Bills after they have been introduced and before they are taken up for consideration in the House and to classify them according to their nature, urgency and importance into two categories : Category A and Category B. Bills in Category A have precedence over those in Category B.

(3) To recommend the time that should be allocated for the discussion of the stage or stages of a Private Member's Bill and also to indicate the different hours at which the various stages of the Bill in a day shall be completed.

(4) To examine every Private Member's Bill which is opposed in the House on the ground that the Bill initiates legislation not within the legislative competence of the House. The Speaker considers such objection *prima facie* tenable.

(5) To recommend time limit for the discussion of Private Members' Resolutions and the ancillary matters.

Financial Legislation

The principles involved in the financial procedure are essentially the same as followed in the British House of Commons. Financial initiative in both the countries is the exclusive right of the Government. Secondly, the House of the People in India, as the House of Commons, has the exclusive right to vote supplies and to sanction the levy of taxes and imposts. Finally, in both countries, taxation, and appropriation and expenditure from public funds need legislative authorization.

The Constitution provides for a special procedure in regard to Money Bills. A Money Bill may not be introduced in the Council of States and it cannot be introduced without the recommendation of the President. When it is passed in the House of the People, it is transmitted to the Council of States, with the Speaker's certificate that it is a Money Bill and the decision of the Speaker on this point is final. The Council of States cannot reject a Money Bill, but it may, within fourteen days of its receipt, return it to the House of the People with its "recommendations". The House may either accept or reject all or any of the "recommendations" of the Council of States. If the House of the People accepts any of them, the Money Bill shall be deemed to have been passed by both Houses with those amendments. If the House does not accept any of the "recommendations" of Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People. If the Bill is not returned to the House within fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the stipulated period

in the form in which it was passed by the House of the People. When it is presented to the President for assent the provision by which the President may return the Bill to the Houses for reconsideration (Article 111) does not apply.

A Money Bill cannot be introduced or moved except on the recommendation of the President. According to Article 110 a Bill is deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters :

(a) the imposition, abolition, remission, alteration or regulation of any tax;
(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the Laws with respect to any financial obligation undertaken by the Government of India;
(c) the custody of the Consolidated Fund[57] or the Contingency Fund of India,[58] the payment of money into or the withdrawal of money from any such fund;
(d) the appropriation of moneys out of the Consolidated Fund of India;
(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
(f) the receipt of money on account of the Consolidated Fund of India or the Public Accounts of India or the custody or the issue of such money or the audit of the amounts of the Union or of a State; or
(g) any matter incidental to any matter referred to above from (a) to (f).''

The use of the word ''only'' at the beginning of the definition of a Money Bill is significant. The Constitution prescribes two conditions for a Bill to be regarded as a Money Bill. Firstly, it must deal with all or any matters contained in Article 110 (i). Secondly, the provisions of the Bill must deal only with such matters and not with any other matter. It is, therefore, not possible to enact as a Money Bill anything which changes the law in other respects. It must be a Money Bill, pure and simple. A Bill which imposes fines, penalties, or licence fees, or deals with taxes imposed by the local authorities is neither a Money Bill nor a Financial Bill. A Money Bill when it is presented to the President of India for his assent must be accompanied by a certificate of the Speaker that it is a Money Bill. The President shall not withhold his assent from a Money Bill passed by Parliament. This is in pursuance of the supremacy of Parliament in the matter of finance.

It is necessary to distinguish Money Bill from Financial Bills. Money Bills are those which are defined in Article 110 as referred to above. Financial Bills are other Bills containing financial provisions but to which the provisions of Article 110 are not applicable. Financial Bills also cannot be introduced without the recommendation of the President, and must not be introduced in the Council of States. Whereas a Money Bill is transmitted to the Council of States for its consideration and ''recommendations'' alone and it has no right to amend it, a Financial Bill can be amended by the Council. It rests with the Speaker of the House of the People to determine whether a Bill is a Money Bill or not. The Council of States has no right to question the certificate subscribed by the Speaker that the Bill is a Money Bill.

The Budget

The Constitution has adopted the fundamental principles governing the British financial system, that is, parliamentary control over the receipt and expenditure of public Money. These principles are :

(1) no tax can be imposed except with the authority of Parliament;
(2) no expenditure can be incurred except with the sanction of Parliament;
(3) no tax can be imposed or expenditure incurred unless asked for by the Executive. It means that financial initiative rests with the Executive alone; and
(4) all expenditure except that specifically charged by any enactment of Parliament requires to be sanctioned on an annual basis. This is called the principle of annuality.

The expenditure for any financial year, the period between April 1 and March 31, must therefore, be sanctioned either totally or in part by Parliament before the expiry of the previous

57. All funds received by the Government of India form the ''Consolidated Fund of India' from which alone the Government withdraws money for its expenditure and repayment of debts.
58. A reserve fund called the 'Contingency Fund of India' is placed at the disposal of the Government to meet the unforeseen requirements exceeding the authorised expenditure. The fund facilitates advances subject to subsequent regularization. It is, in brief, grant in advance pending completion of the regular procedure.

financial year. That is to say, the Annual Financial Statement or the Budget must be passed whether totally or in part before March 31 of each year. The Budget is ordinarily presented to Parliament in the month of February each year in two parts—the Railway Budget and the General Budget. The Railway Budget exclusively deals with the receipts and expenditure relating to Railways and it is separately presented by the Minister for Railways. The General Budget deals with estimates of all the Departments of the Government of India excluding Railways and is presented by the Finance Minister. The procedure in case of the Railway Budget and the General Budget is the same.

The Budget or the Annual Financial Statement, as the Constitution names it, must show separately the expenditure charged on the Consolidated Fund of India and the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India. It must also distinguish expenditure on revenue account from other expenditure. The expenditure charged on the Consolidated Fund of India comprises :

(a) the emoluments and allowances of the President and other expenditure relating to his office;
(b) the salaries and allowances of the Chairman and the Deputy chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;
(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges and the expenditure relating to the raising of loans and the service and redemption of debt;
(d) (i) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court,
(ii) the pensions payable to or in respect of the Federal court,
(iii) the pensions payable to or in respect of judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of the present Constitution exercised jurisdiction in relation to any area included in a Province corresponding to a State specified in Part A of the first Schedule;
(e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India;
(f) any sums required to satisfy any judgment, decree or award of any Court or arbitration tribunal;
(g) any other expenditure declared by the Constitution or by Parliament by law to be so charged.

The expenditure charged on the Consolidated Fund of India is not submitted to the vote of Parliament, but either House of Parliament can discuss it. It is non-votable. The other expenditure is submitted in the form of demands for grants to the House of the People. The House may assent, or refuse assent to any demand, or assent to any demand subject to a reduction of the amount specified therein. It is, votable, but no demand for grant can be made except on the recommendation of the President.

The Annual Financial Statement or the Budget has to pass through five stages : (1) Introduction or presentation; (2) General discussion; (3) Voting of demands; (4) Consideration and passing of the Appropriation Bill, and (5) Consideration and passing of the taxation proposals; the Finance Bill.

(1) *Introduction or Presentation.* The Budget session of Parliament commences in mid-February when the Railway Minister introduces the Railway Budget and subsequently the Finance Minister introduces the Financial Statement in the House of the People. It is accompanied by the Budget Speech made by the Finance Minister. It is an important event as it unfolds the fiscal and economic policy of the Government for the ensuing year. The copies of the Budget together with the Explanatory Memorandum are printed and circulated among members for their reference. The Budget contains the estimates of receipts and expenditure. The Explanatory Memorandum contains a comparative statement of such receipts and expenditure for the current year and the next year and reasons for any increase or decrease in the amounts. The memorandum also furnishes the information relating to estimates.

(2) *General discussion.* After the Budget has been presented, money has to be

asked for as Demands for Grants. Here the Budget is dealt with in two stages—a general discussion, and the demands for specific grants. A general discussion of the Budget as a whole is spread over 3 or 4 days. It is customary for the leader of the Opposition to initiate the discussion. No discussion of details and no cut motions are in order at this stage. It is a general discussion which covers all items of expenditure including those that are 'charged' and are excluded from vote. The discussion relates to the policy of the Government involving a review and criticism of the administration of the various Departments, the general problems connected with nation's finances and the principles involved in the Budget proposals. Following the British practice, the major part of the time for the Budget discussion is allowed to the Opposition to review the work of the Government for the year and ventilate grievances of the people. The discussion is political rather than financial. No vote is taken during the general discussion. But the Finance Minister has the right to reply at the end of the discussion.

(3) *Discussion and Voting.* With the general discussion the work of the Council of States is complete so far as the Annual Financial Statement is concerned. But the House of the People, after general discussion is over, proceeds to the voting of demands not charged on the Consolidated Fund of India. The voting of demands is the exclusive privilege of the House and the Council has no share in it. The House of the People has the following powers in respect of each demand : (i) to assent to the demand; or (ii) to refuse it; or (iii) to reduce it. The House has no power to increase a demand, or to alter the destination of a grant, or to put any condition as to the appropriation of the grant.

The time for debates on the estimates is determined by the Speaker in consultation with the Leader of the House. Reports of the activities of different Ministries during the preceding year are circulated among the members for their references. When the demand for grant of a Ministry is moved it comes under scrutiny and the debate, which usually extends to not more than two days, rivets on the working of the Ministry and its administrative policy. But the real debate takes place when amendments are proposed either for the reduction of the amount demanded or for the omission or reduction of any item in any grant.The voting on the demands must conclude on the fixed day when closure is applied and all outstanding demands are put to vote and disposed of, no matter whether they have been discussed or not..

(4) *Appropriation Bill.* The next stage is the Annual Appropriation Bill which must be passed into a statute. All the demands voted by the House of the People and the expenditure charged on the Consolidated Fund are put together and incorporated in a Bill called the Annual Appropriation Bill. The allotment of time for the different stages of the Bill is determined by the Speaker and debate on the second reading of the Bill is general. When the Bill is moved for consideration, debate is restricted to those points only which have not been discussed during the debate on estimates. Amendments may be moved for reduction in the expenditure alone. No amendments to the grant as voted by the House previously or altering its destination or varying the amount charged on the Consolidated Fund are admissible.

The Appropriation Bill having passed through all the stages is finally voted upon. If passed by the House of the People, it is certified by the Speaker as a Money Bill and transmitted to the Council of States. The Council must return it to the House with its "recommendations" within fourteen days. It is for the House to accept or reject these "recommendations," if any. The assent of the President to the Appropriation Bill is just a matter of formality. He cannot return a Money Bill for reconsideration.

An Appropriation Act embodies the authority given by the House, with the assent of the President, to Government

to spend money as authorized in the Act. Without such an authority the Government cannot incur any expenditure. The Comptroller and Auditor-General of India would hold a payment illegal and unauthorized if it were made without authorization in the Appropriation Act. If the Government subsequently finds that the money granted under any head is insufficient for its need, it again comes to the House for a supplementary grant. The supplementary grants are embodied in one or more Appropriation Bills which must be passed by the House before the end of the financial year.

(5) *The Finance Bill.* The Finance Bill incorporates the financial proposals of the Government for the ensuing year and is presented to Parliament at the same time as the Budget. The procedure followed is that of a Money Bill. The Discussion of the Finance Bill in the second reading is confined to general principles. It is only in the Select Committee that the Bill is considered in detail and amendments are moved. Clause by Clause consideration of the Bill follows after the presentation of the Committee Report. The scope of amendments is limited to proposals for the reduction or abolition of a tax. The financial proposals become operative immediately after presentation of the Budget under the Provincial Collection of Taxes Act, 1931. The Finance Bill must be passed before the end of April.

Since the expenditure sanctioned in the preceding Budget expires on March 31, and the discussion on the Budget for the current year can go on till the end of April or beyond, it becomes necessary to keep the Government functioning pending the final supply. The Constitution, accordingly, provides for grants in advance to be made by Parliament, that is, Vote on Account. The House of the People votes provisionally early in March about a 12th of the estimated expenditure under various grants. The necessary Appropriation Bill for this amount as also a similar amount in respect of the "charged" expenditure is passed. There is no discussion on a Vote on Account as it is an unavoidable formality and a sheer necessity.

59. pp. 516-17.

PARLIAMENTARY COMMITTEES

The Committee System

The principle of appointing committees is not a modern development. It is as old as Parliamentary system itself. The British Parliament soon after its organisation realised that, as a deliberative body, it could not do its work effectively and efficiently, although the business it transacted at that stage of its career was very light and simple. It, accordingly, started the practice of appointing its committees and delegating to them the more detailed consideration of work. With the growth of the parliamentary work and with a view to ensure its smooth, efficient and expeditious disposal the utility and the number of committees increased tremendously, and the House of Commons today relies more on Committees for expertise scrutiny and consideration of legislation and other matters which Parliament is to decide and determine.

The history of the committee system in India goes back to 1854 when the first legislature was established. The Legislative Council appointed its own committee to consider what should be its standing orders. Since then it became a practice of the Council to appoint from time to time committees to deal with varied matters. The existing Committees, may be divided into : (i) Ad-hoc Committees, and (ii) Non-Ad-hoc Committees. In the former category come Select Committees and Joint Committees. Committees in the latter category may be classified according to their functions. The following classification borrowed from S. S. More's *Practice and Procedure of Indian Parliament*[59] presents a matter of fact analysis ;

(a) Committees to inquire :
  (1) Committee of Petitions.
  (2) Committee of Privileges.

(b) Committee to scrutinise :
  (1) Committee on Government Assurances.
  (2) Committee on Subordinate Legislation.

(c) Committees of an administrative character relating to the business of the House :
  (1) Committee on Absence of Members from the sittings of the House.
  (2) Business Advisory Committee.
  (3) Committee on Private Members' Bills and Resolutions.

(4) Rules Committee.

(d) Committees dealing with provision of facilities to Members :
   (1) General Purpose Committee.
   (2) House Committee.
   (3) Library Committee.
   (4) Joint Committee on Salaries and Allowances of Members of Parliament.

(e) Financial Committees :
   (1) Estimates Committees.
   (2) Public Accounts Committee.
   (3) Committee on Public Undertakings.

The Ad Hoc Committee may be broadly classified under two heads :

(1) An Ad-hoc Committee constituted from time to time, either by the House of the People on a motion adopted in that behalf, or by the Speaker, to inquire into and report on specific subject.[60]

(2) Committees set up to advise the House. Under this classification come Select or Joint Committees on Bills which are appointed on a motion made in the House to consider and report on a specific Bill.

A Committee on Public Undertakings has recently been constituted to investigate into the working of public undertakings.

Select Committees

Select Committees are appointed on individual Bills and for making some investigation, inquiry or compilation. The first Select Committee was appointed in 1954 and since then the succeeding Legislatures have invariably appointed numerous such committees. Select Committees, whether for a Bill or for making other investigation, have proved themselves a convenient instrument for detailed examination of Bills and other problems under inquiry. The Speaker remarked in 1955: "when we meet in the committee we do not represent parties, we function as a whole House and we do what, we think, the best in the interest of the House." The Parliamentary Committees help to save time for the House to discuss important matters and prevent Parliament from getting lost in details and thereby losing its hold on matters of policies and broad principles. Apart from this, the very complexity and technical nature of the modern business makes it necessary, that it should be closely scrutinised in a business-like manner, availing of outside technical or expert advice,whenever necessary. The Speaker, accordingly, aptly suggested that the House should rather appoint large Select Committees and leave the "matter to be thrashed out there than in a bigger House."

Members of a Select Committee are appointed or elected by the House itself or nominated by the Speaker. The willingness of the members desired to serve on the committee is ascertained before a proposal for appointment or nomination is made. The chairman is appointed by the Speaker from among its members, but if the Deputy Speaker happens to be a member of the committee, he shall be appointed chairman. One-third of the total membership constitutes the quorum and majority vote determines the decision of a committee. The chairman is entitled to a casting vote in case of a tie. A committee can appoint its own sub-committee. The meetings of a committee are private and are normally held in the precincts of Parliament House. It may send for persons to give evidence and produce papers and records. The report is presented by the chairman of the committee or a member authorised by the committee. Members dissenting from the majority report may submit minutes of dissent. The Speaker has the power to give directions to the committee with a view to regulating its procedure and the organisation of its work. The committee becomes *functus officio* as soon as it has presented its final report.

Joint Committees

In order to avoid duplication of proceedings a Bill may be referred to a Joint Committee composed of members of both Houses. A Joint Committee also saves time and helps to bring about and develop good understanding, an appreciative spirit and co-operation between the representatives of both the Houses. A motion for the appointment of a joint committee and reference of a Bill to such a committee after being carried out in the originating House, is transmitted to the other House for its concurrence. The member-in-charge of a Bill indicates the number and names of the members constituting the committee from the House to which he belongs as also the number of the members from the other House. The proportion of members from the House of the People and the Council of States is two to one.

INDIVIDUAL COMMITTEES

Business Advisory Committee

The Business Advisory Committee of the Lok Sabha consists of the Speaker and not more

60. For instance, the Committee on the Conduct of a Member Mudgal case 1951; the Committee on the Conduct of certain Members during the President's Address; Railway Convention Committee; and the Committee on Bofors guns deal.

than fourteen members nominated by him. The Speaker is its *ex-officio* chairman. As the membership of Committee is limited and there are quite a large number of Opposition groups, it is not possible for the Speaker to nominate members from each and every group. However, in order to make the Committee as broad-based as possible certain prominent unattached members and members of some of the Opposition groups, who do not find representation in the Committee, are invited by the Speaker to attend its sittings. The invited members have neither the right to vote nor are they counted for the purpose of a quorum.

The function of the Business Advisory Committee is to recommend the time that should be allocated for discussion of the stage or stages of such Government Bills or the business which the Speaker in consultation with the Leader of the House may direct to be referred to the Committee. The Committee can indicate in the proposed time table the different hours at which the various stages of the Bill or the business should be completed.

Committee on Private Members' Bills

This Committee consists of not more than fifteen members nominated by the Speaker. The Deputy Speaker is invariably its member and as far as possible every section of opinion of the House is represented thereon. The functions of the Committee are : to examine and classify all Private Members' Bills according to their nature, urgency and importance; to allot time to Private Members' Bill and resolutions; to examine Private Members' Bills seeking to amend the Constitution before their introduction in the House; to examine a Private Members' Bill which is opposed in the House on the ground that the Bill initiates legislation outside the legislative competence of the House and to perform such other functions as may be assigned to it by the Speaker from time to time.

Committee on Petitions

Article 350 entitles a citizen to submit representation for the redress of grievance to any officer or authority in the Union or a State. It is also considered an inherent right of a citizen to present a petition to Parliament ventilating public grievances and offering suggestions on matters of public importance. Rules of the Lok Sabha (160-67) provide for such petition to be presented.

A petition must be submitted to the House with the consent of the Speaker and it should concern some matter engaging the attention of the House, or some matter which falls within the cognisance of a court of law. A petition cannot be presented if it involved expenditure from the Consolidated Fund of India, or pertains to financial matters. A petition is usually presented by a Member who has to give advance notice of his intention to summit it to the House. On the day fixed for its presentation, the Speaker calls out the member's name and he presents the petition indicating briefly its subject-matter. The House thereupon is seized of it and the petition is remitted for consideration of the Committee of Petitions.

The Committee on Petitions is nominated by the Speaker and consists of not less than fifteen members in proportion to the strength of the parties or groups so as to make it representative of all shades of opinion in the House. It examines the merits of the petitions and makes recommendations to the House after taking such evidence as it may deem necessary. No minutes of dissent can be appended to the Report of the committee.

Balram Jakhar, former Speaker of the Lok Sabha, exhorted the Chairmen of the Committees on Petitions of various legislatures, to gear themselves up by reviewing the existing working procedures and devising new ones, if necessary, to handle increasing cases in the future. Legislatures are not "elitist bodies," he affirmed. They are primarily representative institutions of the people and must protect their interests, freedom and public weal. The Committees on Petitions because of the nature of their functions are placed in a unique position to bring the people closer to the legislatures. Therefore, the procedures, "style of working and attitude of the committees should be such as would encourage more and more citizens to approach them for help". Begum Abida Ahmed, who headed the Lok Sabha's Committee on Petitions said, "Our effort should be to strengthen the Committees to an extent, that the common man may look to them with great expectations for redressal of grievances and fulfilment of aspirations."

Committee on Government Assurances

While replying to questions and supplementaries in the House or in the course of discussion on Bills, Resolutions and other Motions, Ministers sometimes give assurances or undertakings either to consider a matter or to take

action thereon or to provide to the House full information later. The Speaker appoints for one year a Committee of the House consisting of fifteen members on Government Assurances with a view to scrutinising assurances thus made and to report to the House whether such assurances, undertakings and promises have been fulfilled or not. If implemented, the extent of their implementation and whether such implementation was within the time necessary for this purpose. Statements showing action taken by Government in implementation of the assurances are laid periodically on the Table of the House by the Minister of Parliamentary Affairs. No Minister is nominated to this Committee. The Council of States has no such Committee.

Committee on Privileges

Members of Parliament enjoy certain amenities, exemptions and privileges to protect their functional freedom individually and the dignity and authority of Parliament collectively. Where there is any question of an alleged breach of a privilege, the matter may be examined by the House but generally it is referred by the House to its Committee of Privileges for examination, investigation and report.

Some of the immunities, exemptions and privileges so enjoyed by members of Parliament are specified in the Constitution, some are contained in statutes, some in the Rules of Procedure and Conduct of Business of the two Houses, and some till recently were based on precedents and conventions of the House of Commons. The Constitution itself provided that until Parliament by law defined these privileges from time to time, if necessary, they would be those of the House of Commons, and of its Members and Committees, at the commencement of the Constitution. The Constitution (Forty-second Amendment) Act, 1976, amended Article 105 (3) and omitted the reference to the British House of Commons and laid down that the powers, privileges and immunities of each House of Parliament would be those of each House that existed at the commencement of the Forty-Second Amendment and as might be evolved by each House from time to time. This provision had not been brought into force till 1978 when the Constitution (Forty-fourth Amendment) Act, 1978, restored the original Clause 3 of Article 105 providing that the powers, privileges and immunities of each House of Parliament, and of the members and committees shall be such as determined by law and till such law is made, they shall be the same as obtaining immediately before the coming into force of Section 15 of Forty-fourth Amendment.

It is now more thanfour decades that the Constitution came into force, but the parliamentary privileges have not so far been codified. The citizen has, therefore, to consult what the law of British Parliamentary privileges was as on January 26, 1950, what the privileges of the Indian Legislatures and, correspondingly, his rights *vis-a-vis* the Legislatures are. This situation operates to the detriment of citizen's Fundamental Rights. "But it would seem", A.G. Noorani remarks, "that the legislators are more concerned about their privileges than the rights of citizens" and there appears to be a consensus "about retaining parliamentary privileges in their existing nebulous state."[61]

The Committee of Privileges was first appointed by the Speaker in April 1950. Initially ten Members were appointed to the Committee and now it consists of fifteen Members nominated by the Speaker at the commencement of the House. It examines every issue referred to it, determines whether the facts reveal a breach of privileges and makes its recommendations to the House. On a motion made to that effect, the report is taken into consideration. The House may agree or disagree with the recommendations of the Committee or may agree with amendments and action may be taken accordingly.

Committee on Subordinate Legislation

The Indian Legislatures have been delegating the rule-making power for more than a century now, but parliamentary control over subordinate legislation is a recent innovation. Since 1953, a Committee on Subordinate Legislation has been constituted by the Speaker for one year. In making selection from panel of names submitted by the Leader of the House and and by the leaders of other parties and groups, the Speaker gives preference to those who have legal background and experience. The main functions of the Committee are to examine and determine :

(1) whether the Rules, Regulations and Orders are in accordance with the general objects of the Constitution or the Act under the authority of which they are made;

(2) whether they contain matters which should be properly dealt with in an Act;

61. Noorani, A.G., "Need to Codify Parliamentary Privileges," *The Sunday Standard*, New Delhi, February 12, 1978.

(3) whether they contain the imposition of any tax;
(4) whether they directly or indirectly bar the jurisdiction of the courts;
(5) whether they give retrospective effect to any of the provisions where the Act or Constitution does not confer such authority;
(6) whether they involve expenditure from the Consolidated Fund or the public accounts;
(7) whether they appear to make any unexpected or unusual use of the powers conferred;
(8) whether there have been justifiable delays in the publication of the Rules or in laying them before Parliament;
(9) whether for any reason they call for any elucidation.

If the Committee is of the opinion that any Order should be annulled wholly or partially, or should be amended in any respect, it reports that opinion, together with the grounds thereof to the House. If the Committee opines that any other matter relating to any Order should be brought to notice, it may report that opinion and matter to the House. Usually, the Committee makes one report to the House during a session. Reports of the Committee are not discussed in the House, but it keeps a constant watch on the implementation of its recommendations. The Ministers concerned are asked to furnish from time to time a statement of action taken or proposed to be taken by them on the recommendations made by the Committee and on the assurances given by them through correspondence with the Committee. The progress of implementation of the various recommendations is reported to the House by the Committee from time to time.

Committee on Absence of Members

Article 101 (4) of the Constitution provides that if for a period of sixty days a Member of either House of Parliament is, without permission of the House, absent from all meetings thereof, the House may declare his seat vacant. Till the Budget session of 1954, the Speaker would read to the House applications for leave and then ascertain the wishes of the House thereon. But thereafter a Standing Committee was set up comprising fifteen Members nominated by the Speaker for one year. This committee considers applications of Members for leave for absence from the sitting of the House. It examines the cases of Members who had been absent for a period of sixty days or more without permission. The Committee recommends to the House whether absence without permission should be condoned or not. In one case it has so far recommended that absence without permission of a Member should not be condoned. The Council of States has no such committee.

Rules Committee

Article 118(1) of the Constitution empowers each House of Parliament to make rules for regulating the procedure and conduct of its business. The Rules Committee has been constituted in pursuance of this provision. It is nominated by the Speaker–the Chairman, and consists of fifteen members. The Speaker–the Chairman, is its ex-officio Chairman. The committee so nominated holds office until a new committee is nominated.

The function of the Committee is to consider matters of procedure and conduct of business in the House and to recommend any amendments or additions to the Rules of Procedure and Conduct of Business that may be necessary. Apart from the members of the Committee some other Members of the House may also be invited to attend particular sittings of the Committee. Till 1954 amendments to the Rules of Procedure were made by the Speaker–the Chairman, but now the recommendations of the Rules Committee are placed before the House and adopted.

Committees Dealing with Facilities

Besides these, there are three committees dealing with provision of facilities to Members : the General Purposes Committee; the House Committee; and the Library Committee. The function of the General Purposes Committee is to consider and advise on such matters concerning the affairs of the House as may be referred to it by the Speaker. The House Committee deals with matters of accommodation, food and medical aid for members. The functions of the Library Committee are : to consider and advise on such matters concerning the Library as may be referred to it by the Speaker, to consider suggestions for the improvement of the Library, and to assist members in fully utilising the services provided by the Committee.

Committee on Estimates

To ensure parliamentary control over grants made to the Government and to supervise and control the actual appropriation, Parliament exercises close scrutiny of public accounts

through two of its Committees—the Public Accounts Committee on Estimates was constituted for the first time in 1950, replacing the then Standing Finance Committee of Parliament. Speaker Mavalankar observed in the Lok Sabha : "Consequent upon the provisions of Articles 113 to 116, as also independently thereof, it was felt to constitute a Committee on Estimates for better financial control of the House over expenditure by the Executive. The chief function of this Committee will be to examine such of the estimates as may seem fit to it and to suggest economies consistent with the policy underlying the estimates. There will be, in addition, usual Committee on Public Accounts. The functions of these Committees will be complementary and, it is expected, they will not only give a picture of the entire financial position but the Committees will be mutually helpful in examining the finances for the future in the light of expenditure in the past.."

The Committee on Estimates consists of not more than thirty Members who are elected by the House from among its Members every year according to the system of proportional representation by means of the single transferable vote. The motion for election of members of the Committee is moved by the Leader of the House at the commencement of each House of the People and in subsequent years by the Chairman of the Committee before the term of that Committee is due to expire. In order to maintain continuity in membership of the Committee a convention has been established since 1955-57 that while nominating Members for election parties and groups in the House should keep in view that as far as possible nearly one-third of the Members retire every year and two-thirds of the outgoing Members are returned. A Minister is not elected to the Committee, and if any Member after his election to the Committee is appointed a Minister, he ceases to be a member of the Committee from the date of his appointment. The Chairman of the Committee is appointed by the Speaker from among the members of the Committee. It is a Committee of the House of the People exclusively and unlike the Public Accounts Committee no member of the Council of States is associated with it.

The function of the Committee is to scrutinize the Budget estimates for the year, to suggest economies in the expenditure, improvement in organisation and other steps for increasing efficiency, to find out whether the money is well laid out and also to suggest the form in which the estimates should be presented to Parliament. Usually the Committee functions through the Sub-Committees, one corresponding to one or more Departments, and their reports are submitted both to the House and to the Government. The Committee does not complete its work with the final passage of the Budget. It continues with its labours throughout the year and exercises scrutiny over one Department or the other as it chooses and deems necessary.

As a convention, the Reports of the Committee on Estimates, like those of the Public Accounts Committee, are not discussed in the House. It is again a convention that the recommendations of a Parliamentary Committee are regarded as directions, and accordingly, the recommendations of the Committee on Estimates are generally accepted by the Government and acted upon. After the Committee's report has been presented to the House, copies thereof are forwarded to the Ministry or Department concerned with a request that replies to recommendations be sent not later than six months from the date of its presentation to the House. On receipt of the statement showing the action taken by the Government, it is examined by the Study Group appointed for this purpose and is placed before the Chairman together with the findings of the Study Group. If there is any point, which in the opinion of the Study Group or the Chairman, requires consideration by the Committee, it is specially referred to it. On the basis of the comments made by the Committee, or the Study Group, a draft "Action Taken Report" is prepared which is again considered by the Study Group. After the Chairman's approval it is circulated to the members of the committee. The report is finalized by the Chairman on the basis of the comments received from the members and presented to the House.

Commenting on the utility of the Committee on Estimates, Asok Chanda says, "In recent years, however, the Committee's contribution has been more impressive.....While the Committee refrains even now from openly criticizing the policy implicit in the estimates, its examination does often indirectly reflect on the manner in which a particular policy has been evolved or is being implemented. There has also been considerable improvement in the organisation of the Committee and in its technique, which has better equipped it to fulfil its responsibilities. Even though it works within the limitations inherent in a democratic form of government, its contribu-

tions are tending to become more and more effective in economizing national expenditure."[62] Morrison Jones is rather critical of the role of the Estimates Committee. Its Members, he says, "are supposed to look for possible economies but they have in fact been happy to rule out the faint line between economy and efficiency. Further, they have not hesitated to recommend in the name of efficiency large administrative reforms and even reorientation of policy. Their audacity occasioned strong comment and it may be that they have in the last few years been more modest in the scope of their reports." But "of their growing competence and effectiveness as a control over ministries," he adds, "there can be no doubt. If they find less to be indignant about it, it is in part because their influence is now automatically reckoned with."[63]

The Public Accounts Committee

The Public Accounts Committee considers the Appropriation Accounts in details and it is the twin brother of the Estimates Committee. Public Accounts Committee were for the first time constituted at the Centre and in the Provinces as early as 1923. But they met under the chairmanship of the Finance Member of the Governor-General's or Governor's Executive Council. Their secretariat consisted of the Finance Department and their role was technicalities. Moreover, the position of the Auditor-General was more governmental than independent and he was in no sense a servant of the Legislature.

In 1950, the Public Accounts Committee was made a real parliamentary committee. The Comptroller and Auditor-General is an important adjunct of the Committee. His audit reports stand automatically referred to the Committee. When the official witnesses are being examined by the Committee, the Comptroller and Auditor-General sits to the right of the Chairman and assists him as the evidence is being taken. With the permission of the Chairman, he may ask a witness to clarify a point and he may further make a statement on the facts of the case. The Committee consists of not more than fifteen members who are elected by the House every year from among its Members according to the principle of proportional representation by means of the single transferable vote. A Minister is not elected a member of this Committee, and if a member, after his election to the Committee, is appointed a Minister, he ceases to be a member of the Committee from the date of his appointment. Since 1954, seven members of the Council of States have been associated with the Committee.[64] The Chairman of the Committee is appointed by the Speaker from among the members of the Committee.

The main function of the Public Accounts Committee is to scrutinize the Appropriation Accounts of the Government of India and other accounts laid before the House and the report of the Comptroller and Auditor-General of India and to satisfy itself that moneys shown in the accounts have been legally disbursed, that expenditure conforms to the authority that governs it and that re-appropriation has been according to rules. The Committee has also to examine the statement of accounts showing the income and expenditure of State Corporations, trading and manufacturing schemes and concerns and projects of autonomous and semi-autonomous bodies whose audit is conducted by the Comptroller and Auditor-General.

The Report of the Comptroller and Auditor-General of India furnishes the Public Accounts Committee with most of the material on which it functions. The Committee has, however, the power to scrutinize and report on almost any matter relating to the management of public finance. The report of the Comptroller and Auditor-General is taken up Ministrywise, and the Departmental Secretaries are required to appear as witnesses to elucidate and explain the observations of audit, in order to enable the Committee to reach final conclusions and formulate its recommendations. The examination of the Committee extends "beyond the formality of the expenditure to its wisdom, faithfulness and economy." Specifically, the examination covers the manner in which approved policy is being implemented, the degree of efficiency and economy with which plans and programmes are being executed and the manner in which discretionary powers are being exercised. The Committee is not concerned with the policy of the method of expenditure. The question whether there is any extravagance or waste in carrying out that policy is within the competence of the Committee. Whenever the

62. Asok Chanda, *Indian Administration*, p. 186.
63. Morris-Jones, W.H., *The Government and Politics of India*, p. 196.
64. A motion in connectioin with the nomination by the Council of States of the seven members is moved in the House of the People every year by the Chairman of the outgoing Committee or the Leader of the House, as the case may be.

Committee decides to examine a matter involving serious financial irregularities, it may appoint a Sub-Committee to go into the matter. A Sub-Committee so appointed, has the powers of the undivided Committee and its report after the Committee's approval, is deemed to be the report of the whole committee.

The utility of the Public Accounts Committee is immense. It is a representative Committee of all shades of opinion and Members of Parliament, who constitute the Committee, recognise the question of public accounts as a national question and, accordingly, its deliberations and findings are devoid of party feelings and partisan approach. It directly contacts the executive officers, the administrators and all those who spend money and, thus, direct elucidation of the disputed matters can be sought from these officials. It may even summon further evidence, oral and documentary. If necessary, evidence may be taken on oath, but in practice that is not done by any Select Committee except in very special cases.

This is a post-mortem examination, all the same, very effective. The Committee has no power to complete any administrative action to be taken on its observations, but that has not detracted from the effectiveness of its recommendations. Recommendations of the Committee are treated with respect by the Government and most of them are accepted and implemented. In case of disagreement between the Government and the Committee with respect to any recommendation the Government must apprise the Committee of the reasons that might have weighed in not accepting or implementing a recommendation. The views of the government are considered by the Committee and it may, if deemed necessary, present a further report to the House. In the event of difference of opinion between the Government and the Committee remaining unresolved, the matters are referred to the Speaker for his guidance. The House seldom discusses reports of the Committee, but Members may use observations of the Committee in their speeches during the discussion on the Budget, demands for grants, etc. However, if there is a specific issue, over which there is difference of opinion between the Committee or the Government or a Minister, that issue can be brought before the House for discussion on a motion.

The utility of the Public Accounts Committee has been variously interpreted. Asok Chanda says that its power is indirect "and lies nominally in the potential results of its reports and the publicity which it is able to give to the question it investigates and in the moral effect of its criticism."[65] Morris-Jones puts it in another way. He says, "The fact that their scrutiny is *ex-post facto* is less important than that the government has continuously to act in the knowledge that scrutiny of any item may take place and that waste and impropriety may be widely exposed in the House and the Press. The fact that the Government replies to the Public Accounts Committee are often vague and cool is less important than that behind the reply there has often been embarrassment and some resolve not to let it happen again."[66]

Five important points were made by the Finance Minister in his address to the Chairmen of the Public Accounts Committees of the Lok Sabha and the State Assemblies in September 1986. First, that the Public Accounts Committees should while relying on the Comptroller and Auditor-General's report, also take into confidence the Finance Ministry or the Finance Departments of State Governments. Second, that the Public Accounts Committees would discharge their functions more effectively if they gave up their pre-occupation with nit-picking issues of non-compliance with rules and regulations, etc., and instead took a broader view, from time to time. Third, that in view of the resources constraint, which involves having to choose between different projects, the Public Accounts Committees should seek the assistance of the Comptroller and Auditor-General in drawing up a list of projects and programmes that have lost their relevance so that these can be scrapped and the money thus saved diverted to more useful programmes or projects. Fourth, that the Public Accounts Committees should insist on accounts of the previous year being presented in the winter session at the latest, instead of having to wait for almost two years. Lastly, that the accounting practice of State Governments, specially at the district treasury level, should be strengthened along the lines suggested by the Finance Ministry in 1976.

These suggestions deserve to be taken seriously. The Public Accounts Committees should

65. Asok Chanda, *Indian Administration*, p. 183.
66. Morris-Jones, W.H., *The Government and Politics of India*, pp. 195-96.66.

take up the really serious issues and give up their excessive preoccupation with trivial. The crux of the issue is watch-dog function that the Public Accounts Committees are supposed to perform. While by and large they have discharged this function reasonably well, they have mostly succeeded in highlighting relatively minor financial irregularities. The bigger sins of omission and commission, such as time and cost over-runs, poor choice of technologies, bad project planning and implementation, etc., have escaped their notice. N.C. Ranga, who was Chairman of the Central Public Accounts Committee in 1958-59, said, "It is a notorious fact that politics comes in as one of the elements to bloat demands and expenditures; inefficiency and indifferent management of funds, whether from the Centre or the States, have become endemic feature, that result in heavy wastage of public funds."

Committee on Public Undertakings

The demand for a separate committee on Public Undertakings goes back to 1953. Speaker Mavalankar, in a letter dated December 19, 1953, wrote to the Prime Minister that there was a general feeling in favour of setting up a Standing Committee to examine the working of autonomous Corporations. He pointed out that the Estimates Committee and the Public Accounts Committee were already overburdened with work and would not, therefore, be able to find time to go into the working of the Corporations. But the Prime Minister did not accept the suggestion and the matter lingered on till 1964 when a Committee on Public Undertakings was constituted.

The Committee on Public Undertakings consists of not more than ten members elected by the House of the People from among its members according to the principle of proportional representation by means of the single transferable vote. Five members from the Council of States elected in the same manner, are associated with the Committee. The members of the Council are invited to associate with the Committee on a motion adopted by the House and concurred by the Council. A Minister is not elected a member of the Committee. If a member elected to the Committee is subsequently appointed Minister, he ceases to be a member of the Committee from the date of his appointment. The chairman is appointed by the Speaker from among the members of the Committee.

The functions of the Committee are :

(1) to examine the report and accounts of the such public undertakings as have been specifically allotted to the Committee for this purpose;
(2) to examine the reports, if any, of the Comptroller and Auditor-General on the Public undertakings;
(3) to examine, in the context of autonomy and efficiency of public under takings, whether the affairs of the public undertaking are being managed in accordance with the sound business principles and prudent commercial practices; and
(4) to exercise such other functions vested in the Public Accounts Committee and the Estimates Committee in relation to the public undertakings specified for the Committee as are not covered by (1), (2), and (3) above and as may be allotted to the Committee by the Speaker from time to time.

The Committee shall, however, not examine and investigate any of the following matters:-

(a) matters of major Government policy as distinct from business or commercial functions of the Public undertakings;
(b) matters of day-to-day administration; and
(c) matters for the consideration of which machinery has been established by any special statute under which a particular undertaking is established.

The total Government investments in public undertakings in different States amounted to Rs. 25,000 crores on March 31, 1983. The Committee has investigated into and examined all aspects of the working of these undertakings. One innovation introduced by the committee is the "horizontal study," where some aspect of the working of all public undertakings is studied and norms of performance, cost, practices, etc., are set down.

The Committee in its 32nd report voiced concern at the gradual erosion of the decision-making powers of the public sector enterprises. It noted that to ensure an efficient running of the public sector companies the Industrial Policy Resolution, 1956, had clearly stated that the managers should have the largest possible measure of freedom. It is precisely for this reason that the then prevailing practice of having departmental undertakings was jettisoned and public sector firms were set up as corporate entities. Over the years, however, the autonomy that these corporate entities should have enjoyed and exercised, was gradually encroached upon and they came

to be run as mere extensions of the ministries. According to the Committee, although on paper the public sector managers enjoy large autonomy, ministries and government departments have virtually usurped their decision- making powers. The Committee has recommended that "necessary ground rules should be laid down to restrict the Government directions only to matters of policy without transgressing into the spheres of detailed administration."

Consultative Committee

Apart form the Committee of the Legislative Assembly, prior to 1950, members of both Houses of the Central Legislature also served on the Standing Advisory Committees attached to various Departments of the Government of India. All these Committees were purely advisory bodies and functioned under the control of the Government and the Minister incharge of the department acted as the Chairman of the Standing Advisory Committee. After the 1950 Constitution became operative, the position of the Central Legislature changed, significantly and these Committees were consequently abolished. But the Government had been seriously thinking all that time how to associate the members of the Parliament with the working of various Ministries and Departments of the Government and thereby provide them with opportunities for discussion of broad policies of the Government in an informal manner. In 1954 the Government decided to establish Informal Consultative Committees for the various Ministries. But the Opposition parties and groups did not take kindly to the Consultative Committee. As a result of discussion between the Government and the Opposition at different levels in 1969, it was decided to delete the word "Informal" from their nomenclature. Mutually agreed "Guidelines" were also formulated to regulate their functioning. The Government, however, did not accept the suggestion of the Opposition for the formation of the Parliamentary Committees in place of Consultative Committees.

Members of both Houses of Parliament are nominated on the Consultative Committees for various Ministries by the Minister of Parliamentary Affairs, on the basis of preference indicated by the members themselves or by the party leaders. Members of the Opposition parties are nominated in proportion to their numerical strength in Parliament. Every Opposition party or group has, thus, its fixed quota for representation on the Consultative Committees and these parties and groups are free to nominate their members on more than one Committee within the quota allotted to them. The unattached members, and members belonging to the ruling party are nominated on the basis of the preferences indicated by them and sent individually to the Department of Parliamentary Affairs. The Committees are reconstituted every year and a member once assigned a Committee for a Ministry, according to the preference indicated by him, continues to be a member of that Committee unless he himself opts for another Committee. The Minister concerned presides over the meetings of the Consultative Committee attached to his Ministry. The Committees provide a forum of informal discussions between the members, Ministers and senior officials of the Government on the problems and policies of the Government relating to administration in a manner which is not practicable on the floor of the House. The deliberations of these Committees are informal and no reference to the discussions held in the meetings is made on the floor of the House and it is binding on the Government as well as the members of the Committees.

Members of these Committees are free to discuss any matter which can appropriately be discussed in Parliament. The practice is to invite suggestions and items for discussion from members and thereupon agenda with notes is prepared and circulated among members. The Committees cannot summon witnesses, to send for or demand the production of any files, or to examine any official records. The Chairman of the Committee may, however, furnish any additional information required by members. A brief record of the discussion in the meeting of a Committee is prepared and circulated among members, except in the case of Ministries of Defence, External Affairs and Department of Atomic Energy :

In matters where there is unanimity, the Government normally accepts the view of the committee subject to the following exceptions :

(i) any view having financial implications;
(ii) any view concerning security, defence, external affairs and atomic energy; and
(iii) any matters falling within the purview of an autonomous corporation.

If the Government finds it difficult to accept the view of the committee, the reasons thereof are explained to the members of the Committee.

But the Consultative Committees, it is widely felt, do not function as committees and still less discharge the functions of consultation except in a purely formal sense. The committee, attached to a Ministry, does not meet by itself without the Minister to discuss or deliberate. It is convened by the Minister. Polemics and partisanship are as present in the committees' deliberations as they are in Parliament itself. The duration of the meeting is decided by the Minister concerned who presides as chairman. The frequency of the meeting varies from two to six per year. Each meeting lasts about a couple of hours unless it is extended to the following day as it happened on January 25, 1978 in the case of the committee attached to the Ministry of External Affairs.

The need for effective Parliamentary Committees is being widely recognised and there was a demand of a cross-section of the Members in the House of the People for increased powers and functions to Parliamentary Consultative Committees. Members generally wanted their status as Standing Committees to be restored so that they might share some of the burdens of Parliament. The Parliamentary Affairs Minister, Ravindra Verma, ruled out the demand and asserted that the Consultative Committees were functioning satisfactorily and the present Government (Janata) had no proposal to increase their powers.

A proposal to do away with the Consultative Committees and replace them with Subjects Committees, as the Public Accounts Committee and the Public Understanding Committee of Parliament, had come up during the late half of 1989. It was considered with some trepidation by the Congress Government of the day headed by Rajiv Gandhi. Even though the move had the backing of the then Speaker of the Lok Sabha Balram Jakhar, it remained a non-starter as the Ministry of Parliamentary Affairs was opposed to it as also various other Ministries and Departments who had expressed strong reservations about such Committees. The Subjects Committees pertaining to agriculture, environments, and science and technology were, however, subsequently set up, though they have so far remained only on paper.

It was reported in September 1991 that the Lok Sabha and Rajya Sabha Secretariats were making a fresh attempt to resurrect the proposal to do away with the Consultative Committees.[67] But it again created a mild flutter in the Ministry of Parliamentary Affairs. The lobby in the Government was for continuing the system of consultative committees. In their opinion the idea of having subjects committees was sought to be pushed by the Secretariats of the Lok Sabha and Rajya Sabha allegedly to enlarge their sphere of influence. This is, however, neither a valid nor a logical argument to rebut the cogency of proposal. Several veteran Members of Parliament during the recently concluded 1991 Budget session of Parliament underlined the need for setting up subjects committees ensuring thereby a proper scrutiny of the functioning of various Ministries and Departments and accountability fixed in case of any lapse or dereliction. But the Minister of Parliamentary Affairs had obliquely ruled out the setting up of subjects committees on the ground that the country had given itself a "Parliamentary system of functioning".

THE DECLINE OF PARLIAMENT

Speaker Balram Jakhar, delivering the Presidential address at the conference of presiding officers at Hyderabad on December 28, 1981, described the tendency to "decry and berate" legislatures as "dangerous." He said in his view all the talk one heard of declining image of the legislatures stemmed from insufficient appreciation of the role that belonged to the legislature in a democratic polity. The representative institutions, he added, performed a crucial role as the central arena where all the competing forces in the polity, ideas, ideologies and interests, were brought face to face for organised interaction. "If the corporate conscience of the community is to find voice and assert itself it can be done only in a legislature—a people's forum, by the people's representatives. Who else can espouse and uphold the cause of the poor, downtrodden and the defenceless."[68]

The Parliamentary system of Government that India deliberately adopted ensures harmonious co-operation between the executive and legislative branches of government and there is no working at cross purposes between these two wings of government. Ministers are the heads of the various administrative departments, and, at the same time, they are members of the majority party in the legislature. Being in constant touch with the Opposition as well as in still closer contact with the members of their own party the

67. As reported in *The Times of India*, New Delhi, September 27, 1991.
68. As reported in *The Times of India*, New Delhi, December 29, 1981.

ministers can feel the pulse of the legislature and through it the pulse of the public opinion and can thereby obtain useful criticism, in a friendly way of their measures. The members of the legislature can also call to the attention of the Government any grievance felt by their constituents and secure redress. The system, according to James Bryce, secures "swiftness in decision and vigour in action, and enables the Cabinet to press through for such legislation as it thinks with the confidence that its majority will support it against the attacks of Opposition."[69]

The essential feature of Parliamentary democracy is a certain degree of moderation among the political parties, or what may be described political forbearance. The minority agrees that the majority should govern and the majority agrees that minority must criticise and even depose the Government if it can carry with it the majority in the legislature. The Opposition is the prospective Government and it understands and observes the rules of the game, as the majority does. The Government so arranges the parliamentary programme as to give the due opportunity to the Opposition to discuss and criticise its actions. The Government even becomes wiser by that criticism and arrives at a compromise. This is the essence of discussion and parliamentary government succeeds *par excellence* in this respect. The situation of ruthless opposition prevails only when extremist and anti-democratic forces gain a substantial membership in the legislature which they proceed to terrorise and ridicule. Parliamentary system recognises and welcomes differences and it provides the machinery for their expression. But these differences must not go so far as to make the work of Government impossible. If such things are allowed to happen, as they do in India, it is the end of parliamentary democracy.

In the 1950's and early 1960's India had the moral strength of a nation on the move. Jawaharlal Nehru, the first Prime Minister, nurtured the parliamentary institutions and even his stout critics never disputed that he made a unique contribution towards strengthening the foundations of parliamentary democracy in India "The universal admiration Nehru commands on this score" explains Atal Behari Vajpayee, "was not because of any exceptional parliamentary skills that he possessed; it was because of his sincere respect for Parliament and his regard for parliamentary propriety and procedures." [70] Even when his dominance in Parliament was complete and the House of the People was often referred to as his "sounding board," Nehru sought to carry it with him on all important matters instead of imposing his will on it. He would neglect any of other responsibility but not attendance in Parliament when it was in session. Hiren Mukherjee, in his reminiscences, *Portrait of Parliament,* recalled : "Till a few months before his death, Jawaharlal Nehru dominated Parliament....This was not on account of any oratory.....This was not on account of any mastery over the intricacies of procedure, which he never claimed. Rather it was on account of innate and unfailing respect which he had for Parliament as the symbol of the people's power and as good a repository as could be devised of their collective wisdom in our kind of society.....Respect for the House is the foundation of good Parliamentarianism—never to hedge or dodge, being ready to admit errors with grace and always come out clean." When allegations of corruption were levelled in Parliament against Pratap Singh Kairon or K. D. Malviya or T. T Krishnamachari, Nehru's initial response used to be of annoyance and anger. He felt that the Opposition "was unjustifiably pillorying colleagues of his for political gain." But when the facts marshalled by Opposition members "seeped home to make it evident that here was in fact a *prima facie* case, Mr. Nehru did initiate inquiries against these three. Ultimately all three had to go."[71] He respected the Opposition point of view on many occasions and yielded to the criticism with grace.

Undoubtedly, Parliament's functioning left much to be desired even during Nehru's time. Nevertheless, Nehru was greatly missed within a few years of his death. The decline of Parliament became so pronounced by the early seventies that the years under Nehru appeared in contrast as Parliament's "Golden period." The split in the Congress and proclamation of Internal Emergency in June 1975 inflicted a grievous blow to the parliamentary institution provoking a veteran to remark : "Our problem is no longer one of how to strengthen Parliament. We have now to save Parliament."

In their earnest effort to make Parliament a model of dynamism the Founding Fathers en-

69. Bryce, James, *Modern Democracies*, Vol. II, pp. 510-11.
70. "The Decline of Parliament," Express Magazine, *Indian Express* (Sunday Edition) December 6, 1981, p. 1.
71. *Ibid.*

grafted an innovation in the Constitution empowering Parliament to lay down additional qualifications for becoming a member of either House apart from being qualified to be an elector.[72] This provision according to Ambedkar, was intended to ensure that men of better calibre than an ordinary elector adorned both the Houses of Parliament. But no additional qualifications to achieve that end have as yet been framed. Provision was also made in Article 80 (a) for the nomination by the President of twelve members of the Council of States consisting of persons "having special knowledge or practical experience" in respect of such matters as literature, science, arts and social service. This provision was intended to enable the Government to make available to Parliament the services of distinguished persons who were election shy and would not like to be involved in the rough and tumble of politics. Several eminent men in their respective fields adorned, generally in the first two decades the Council of States. But since 1971, this provision has been observed more by breach and without any respect to the intention of the Constitution-makers. Nominations are now regarded as the choicest plums in the basket of the ruling party to be distributed among the faithfuls and discredited loyal partymen at the polls.

By all standards it has been acknowledged that the quality of debates in the House of the People (Lok Sabha) as well as interventions have gone down. One has only to recall how in the early days of the House the debates were not only scintillating but well-informed. This was not just because there were giants in the House in those days, but both on the Treasury and Opposition benches, individual members did a lot of homework, prepared thoroughly before they spoke and acquainted themselves convincingly. In fact, many a member made his tenure in Parliament a period of self-education, a stint for enlightenment. Both among the ruling and Opposition members of Parliament one would find self-made specialists who took their job seriously and with a clear sense of devotion to the national interest as members of the highest legislature of the country.

But the quality of the membership has deteriorated over the years. For this the leadership of every political party is responsible. Party tickets for parliamentary elections are no longer given on considerations of merit, on the potentiality of a person to develop as a serious and dedicated member of the highest legislature of the country, but on consideration other than merit. The process of selecting candidates now is the usual routine recommendation of the State units to be chosen finally by the central parliamentary board of the party. Invariably all parties selected their candidates on the basis of their pull with the communal, caste and bloc votes. The Janata Party, till its disintegration, had a fixed quota of candidates for each of its constituent units. In all elections since 1971, the personality of Mrs. Indira Gandhi became the only focal point of party propaganda. After the second split of the Congress in 1978, the faction headed by Mrs. Indira Gandhi became Congress (Indira) and in the 1980 Parliamentary elections loyalty to Mrs. Gandhi during days of her political distress was the major criterion for selecting party candidates. Unflinching loyalty to a person is a unique norm for selecting party candidates and it has no parallel in the annals of any country with a democratic system of government. Such a criterion produces a breed of the sycophants and not parliamentarians. They do not represent the people in the national forum but a single person whose behests they unhesitatingly obey and follow. They, thus, sacrifice their independence of judgment and narrow their horizon of approach to the solution of the national problems. Parliament is a deliberative assembly of one nation, with one interest, that of the whole nation. Sachchidananda Sinha, Provisional Chairman of the Constituent Assembly, quoted in his inaugural address the words of Joseph Story :....."Republics are created —theses are the words that I commend to you for your consideration—by the virtue, public spirit and intelligence of citizens. They fall when the wise are banished from the public councils because they dare to be honest, and the profligate are rewarded because they flatter the people in order to betray them." Sachchidananda Sinha's words have proved prophetic. A decade or so back Nani A. Palkhivala wrote that after thirty years of independence, "Indian democracy has reached the nadir because in our average politician we have the pathetic amalgam of lack of true intellect with lack of character and lack of knowledge."[73]

Sir Ivor Jennings has succinctly analysed the role of the Opposition in a parliamentary system of government. The Government governs

72. Article 84 (c).
73. "Has the Constitution Failed ?" Nani A. Palkhivala, the *Illustrated Weekly of India*, Bombay, September 16, 1979.

and the Opposition criticises. "Failure to understand this principle," he lamented "is one of the causes of the failure of so many of the progeny of the Mother of Parliaments and of the suppression of Parliamentary government by dictatorship." Attacks upon the Government and the individual ministers are the functions of the Opposition. It adopts Sir Toby's advice "so soon as ever thou seest him, draw; and, as thou drawest, swear horrible." That duty is the major check which the Constitution provides upon corruption and defective administration. It is also the means through which individual injustices are prevented. The House of Commons, Jennings points out, 'is at its best when it debates those individual acts of oppression or bad faith which can never be completely overcome in a system of government which places responsibility on such minor officials as police officers. It is the public duty of the Opposition to raise such questions. It is a duty hardly less important than that of Government."

The role of the Opposition which Sir Ivor Jennings emphasises relates to a country with two-party system as it had till recently in Britain. However, there are still two major parties, Conservative and Labour, and among them the Government alternates one in power and the other in Opposition. India has a multiple-party system with only four recognised national parties and a score of others including the regional parties. Opposition is, therefore, a motley of groups with no unity of purpose or ideology to hold them together for a concerted action. Disraeli believed that "no government can long be secure without a formidable Opposition." The Opposition parties and groups in India are so sharply divided among themselves that they do not see, as they had not seen before until 1977, any chance of their being able to come to power in the foreseeable future. The Janata miracle of 1977 is not likely to repeat itself. This psychological factor affects the thinking and strategy of the Opposition.

When the Congress was at its crest after 1971 parliamentary elections, the Party President Dev Kanta Barooah said : "Our country can do without Opposition. They are irrelevant to the history of India." The second part of this observation is all too sadly true in practice. In Britain, according to the ancient theory, service in the House of Commons is like a jury service, not a right but duty. In India, the politicians are driven always by the quest of obvious authority. In a status conscious society, as India is, politicians are incapable to grasping that a subtle form of power can also be exercised by those who do not hold ministerial office. Self-seeking men of limited vision view the Opposition "as the refuge for failure and the nursery of frustration. They fail utterly to realise that those who oppose also serve a valid purpose in a parliamentary democracy."

The first part of Barooah's comment is irrelevant in the context of the parliamentary system of government that the Constitution establishes and shall remain so as long as such a system endures. Opposition is the life blood of the parliamentary government. The Janata Government in 1977 recognised the indispensability of the Opposition by recognising the leader of the Opposition, Y.B. Chavan, who led the Congress Parliamentary Party. He was paid a salary from the exchequer and was given the status of a Cabinet Minister. The Congress(I) ruling party did not abandon this practice and it is well-trenched now. But the effectiveness of the Opposition does not exist in the midst of multitude of Opposition parties and groups and, particularly, when a regional party, Telugu Desam, constituted the largest Opposition group in the Eighth House of the People (Lok Sabha). They were strange bed fellows to combine them together. In a vain bid to form an alternative to Congress (I) various conclaves and conferences were convened during the many years suggesting even a confederation of the non-Congress (I) Opposition parties, but insurmountable hurdles plagued their efforts at every stage. An "Activist,"[74] writing under the caption "What must Opposition Do ? Other than Heckle the Government,"[75] suggested, *inter alia*, "What we in that loosely called collectivity, the 'national opposition' need to do urgently is above all to regain our identity. Only then can our purpose and role follow, and only then credibility be restored, not otherwise....Our public image is even worse....People are not ready yet to put destinies into our hands again."

An important feature of a successful parliamentary system is a certain degree of moderation among the political parties and accordingly,

74. An important leader of he Opposition "Activist" wrote under a pseudonym so that the propositions, he suggested, may be considered independently of who he was and which group he belonged to.

75. *The Times of India*, New Delhi, July 30, 1986.

both the party in power and Opposition should understand and observe the rules of the game. A simple practice of British politics, is, "If you wish to govern, you must show yourself to be governed." This rule acts as a powerful and valuable stimulus both to the majority and the minority. Just as the party in power must reconcile differences with the Opposition in order to ensure a stable government representing public opinion and to win approbation of the electorate who gave them the mandate to govern, similarly, the Opposition must remain moderate and sensible, if they are to win approval as an alternative government. When political parties become intolerant of one another and virulent in opposition and attacks, orderly government cannot exist. For the success of the Parliamentary system of government rational and responsible Opposition is as necessary as the rational and tolerant majority imbued with the sense of give and take.

That precisely does not exist in India. The ruling party is intolerant and irrational in its approach and the Opposition, no matter what its label is, resorts to every trick, every method of obstruction and filibuster. And if everything else fails even force may be applied. It also claims its rights to go to the streets and organise agitations against the Government in order to achieve its objective. What began in the sixties in the aftermath of the Sino-Indian border conflict, as outbursts of anger and frustration of an Opposition then venting the national mood in Parliament, has over the years become a recognised parliamentary practice. Pran Chopra gives a graphic picture of the functioning of the House of the People. He writes, "It should make a true democrat weep to see what happens daily on the floor of Parliament, especially the Lok Sabha. Pandemonium has become a daily event, with members outshouting everyone instead of trying to outargue anyone. Defiance of the Speaker has become a habit with some, disregard of the rules a habit with many. Interrupting one another is more the rule than the exception, and the resulting din overpowers everyone's ability to think."[76]

But what happened in the House of the People in a brief first session of the Seventh House of the People shall perhaps remain unprecedented. A group of young ruling party members resorted to obstreperous heckling of some of the more important Opposition members on practically everyday, sometimes even when the Leader of the House was present. Not a single senior member of the ruling party made an effort to control their partymen. Indeed, they seemed to offer encouragement by their own comments about the Opposition. Frank Anthony (Nominated) had, earlier, mentioned that the House had sometime tended to become what he called a bear garden. "It has been a matter of sadness to some of the senior members that certain members almost specialised in an attitude of defiance of the chair." He also stated again that "there might be a tendency, because of its overwhelming strength." In the Eighth House of the People the discussion on the "Bofors Kickbacks" issue, the Opposition charges were sometimes explicitly stated but were more often insinuated with a viciousness rarely seen before. Ajoy Biswas, the CPM member from Tripura, went down in history as one who had been suspended for the entire session. When the Speaker asked Defence Minister K.C. Pant to read the motion on the Bofors panel, he rushed to the well of the House and snatched the papers from him. The Eighth House of the People truly touched its nadir in July-August 1987.

The Council of States was seen by the Constitution-makers as a foil to the tyranny of the majority entrenched in the House of the People. The elders in the Council were expected to bring to bear on the legislative business a measure of detachment and freedom from partisan passion. But these expectations were soon belied. The working of the Council of States has not been substantially different from the Lower House. The proceedings of the Upper House are as boisterous as in the Lower House. The sharp clashes between the Chairman, who also was the Vice-President of India, and Piloo Mody, Leader of the Janata Party and the Leader of the House Pranab Mukherjee, who also was the Finance Minister, and the indecorous language used by them towards the Chair, has, perhaps, not a parallel even in the House of the People."[77]

Two results flow from the above analysis : the apathy of the members in the transaction of the business of Parliament and its shrivelling sessions. Both are interconnected and importantly contribute to the decline of Parliament. Parliament in India has its own clearly set-out Rules of Conduct and Procedure as the Mother

76. "The Twilight of Parliament," *The Tribune*, Chandigarh, September 8, 1978.
77. See *ante*.

of Parliaments has May's Parliamentary Practices. The only difference between the two is that while working in the British Parliaments their observance is the rule, their breach the exception. In India, it is just the other way round. No other Parliament has a so-called Zero-hour [78] which begins at the end of the Question-hour. While the Presiding-Officer is calling upon Ministers to lay papers on the table, there may be many as two dozen members on their feet clamouring for his attention to make statements on matters of public importance, special mentions, call attention motions or points of order. It is free play for all and the rules are cast to the winds. The pleadings of the Speaker that they should speak one by one are of no avail. Speaker Balram Jakhar's admission that the image of Parliament must be protected led to the thinking that Zero-hour might be abolished. But members are not prepared to surrender their this cherished right of redressal of grievances. The then Bharatiya Janata Party President, Atal Behari Vajpayee, said at Vijayawada on September 13, 1982, that any attempt to do away with the Zero-hour in Parliament would be stoutly resisted by the Opposition. He maintained that it was an Indian innovation which "would help accelerate the pace of socio-economic transformation."[79] But no one realises that every minute of Parliamentary Session is estimated to cost the exchequer about Rs. 800.[80]

Question-hour is the most effective instrument in a parliamentary democracy for seeking information from the executive. Questions asked, oral or written, bring to light the activities of government and subject the Government to public scrutiny, and this is, according to Herman Finner, "The fundamentally characteristic way of keeping the Cabinet painfully sensitive to publics opinion."[81] The proceedings of each House of Parliament in India begin with the Question-Hour. Twenty questions are listed for each day and it is rare that more than four are taken up in the hour scheduled. While the questioner is putting his or her supplementaries, a dozen or more hands are raised to catch the eye of the Presiding Officer. There are cries from the different corners of the House addressed to the Speaker, "Look this side, Sir ! And this side too ! Why do you always look right or left and never in the front ?" Supplementaries usually take the form of speeches with lots of interruptions. The requests from the Speaker not to make speeches but ask questions remain unheeded and his admonitions go unheard. Tempers are frayed, unparliamentary expressions are used and ordered to be expunged. They are expunged from the record and banned to the Press, but hundreds of visitors in the galleries of the House everyday hear them and spread vastly exaggerated accounts of what transpired in the House. It lowers in the public eye the dignity and prestige of Parliament and, *ipso facto,* of the representatives whom they had elected.

Equally disquieting are the twin tendencies of absenteeism and thin attendance. "Sometimes just five members conduct the business", H. V. Kamath observed in March 1979 while a Business Advisory Committee Report was beeing discussed. "Heaven help us for democracy cannot go on at this rate," he commented with feeling. Professor P. G. Mavalankar had in that same discussion explained "quite a large number of our friends" come only when they had to speak in a discussion. "They then attend, speak and go away." He added "I suppose all of us ought to take things seriously.....It is only a microscopic minority who take Parliament seriously and who sit in the House from say, 10.30 a.m. to 6.30 p.m." The Minister of Parliamentary Affairs agreed with this. He said, "I agree there are Hon'ble members who sit through in the House and there are others who come, sit for some time, and then go away." This was, he added, " a question which should be posed to the conscience of all members." A House of People (Lok Sabha) bulletin had in March 1979 suggested, citing previous ruling of the Speakers, that it was a breach of Parliamentary etiquette and a discourtesy to the House for members to come in only to make a speech and go away, and it had no effect at all on the Honourable Members.

This casual attitude of members towards the proceedings of Parliament is embarrassing to the Government and so often Ordinary Bills and even Constitution Bills had collapsed. The 46th Amendment Bill collapsed because a large number of members belonging to the ruling party had been in Parliament at the time of the division, but

78. See *ante.*
79. As reported in *The Hindustan Times,* New Delhi, September 14, 1982.
80. This was revealed by Shyam Lal Yadav, Deputy Chairman of the Council of States (Rajya Sabha) in his Key ote address on "Question hour : how to make it more effective." As reported in *The Times of India*, New Delhi, January 23, 1983.
81. Finer, Herman, *Government of Greater European Powers,* p. 162.

not in the House. The 47th Amendment Bill faced the same fate as befell the 46th. The First, Seventh, the Seventeenth and Nineteenth Constitution Amendment Bills had earlier fallen through for want of the prescribed majority.

Even during the discussion on the Punjab crisis, a crucial issue agitating the nation and on the resolution of which depended the unity of the country, there was perceptibly high rate of absence when the Home Minister spoke. If the House was not adjourned it was not because more than the requisite number of 55 members was present [82] but the Speaker who alone has to decide on the quorum thought it discreet not to press for it. [83] The Postal Amendment Bill, which sought to reduce one of the vital fundamental rights conferred on a citizen by Article 19 of the Constitution, was passed when only 20 members were present in the House. In case the President had assented to this bill, it would not have been a legally enacted measure and its validity was liable to be challenged in a court of law on that ground. During the debate on the President's address (1987)—the major debate which is generally taken up first during the budget session—one could see a lack of quorum, though this embarrassment was ignored.

This is not a recent development. This irresponsible absenteeism has been increasing over the years and there are absolutely no extenuating circumstances in defence of this conduct of the members of Parliament. They are paid fairly well and their perks are considerable. They are extremely touchy about their privileges, perquisites and other trappings that go with their high status and they can be pugnacious in defence of these. But their attitude towards the rightful role that the great institution of Parliament must play has become despairingly cynical. They do not seem to bother even if the august House does not meet. This, unfortunately, is true as most of the Treasury benches, enjoying even a virtual four-fifths majority, as of disparate Opposition groups. Otherwise, a vigilant Opposition could have easily embarrassed the complacent, indolent and disorganised ruling party by mustering quorum of its own and the most controversial Postal Amendment Bill would have foundered on the floor of the House of the People. [84]

When the guillotine was applied in the House of the People (Lok Sabha) debate on budgetary demands for Ministries and Departments, the executive was allowed to get away with the authority to spend during 1987-88 more than Rs. 21,000 crores without Parliamentary scrutiny. It was then a record, for the demands of as many as 20 Ministries and four Departments, including Industry, Commerce, Planning and Programme Implementation, Textiles, Food and Civil Supplies, Steel and Mines, Surface Transport, Tourism and Health and the entire range of science subjects consisting of Atomic Energy, Space, Ocean Development and electronics, could not get a chance to be considered. The number of Ministries whose demands the House was able to discuss in some detail were just 10 and it might have been even less, had not the time for putting an end to all discussions on demands been extended by two sittings. During the Budget session in 1986, the House discussed at length the demands for 11 Ministries and five Departments. The previous year (1985), the figure was 15 Ministries and five Department. In 1991 the guillotine cut short the debate on the demands for grants of various Ministries except five Ministries. This was claimed as an improvement on the Lok Sabha's performance in 1990 when it had a detailed examination on the functioning of only four Ministries. In 1992 demands of seven Ministers could be discussed and 35 guillotined involving demands totalling Rs. 233, 398 crores. This sorry state of affairs continues unabated year after year.

It is hardly a happy development that the number of Ministries and Departments whose budgetary demands the House of the People is able to discuss in details keeps dwindling. Speaker Balram Jakhar was himself exercised over this development not long ago and spoke more than once of the need to ensure genuine

82. Article 100 (3) of the Constitution provides that the quorum to constitute a meeting of either House shall be one-tenth of the total number of the members of the House.

83. Article 100(4) states that if there is no quorum, it shall be the duty of the Chairman or Speaker or person acting as such to adjourn the House or to suspend the meeting until there is a quorum.

84. The Congress (I) Parliamentary managers took a serious view of the large-scale absence of party members. In what is described as a strong plea for taking Parliament seriously, the Minister of Parliamentary Affairs (H.K.L. Bhagat) wrote to all party members (March 1987) to guard against absenteeism. The letter was supplemented by verbal exhortations. It had been suggested that the members should not leave Delhi during the session without informing party whips and that too if they had pressing reasons. While in Delhi, they should make it a point to be present in the House. If that was not possible, they should be in Parliament House to be able to respond to the quorum bell. The conveners of the State Committees were urged not only to ensure that the members from their respective States attend, but also in monitoring the response to his exhortations.

parliamentary scrutiny of the Budget through Standing Committees.

S. N. Mishra, a senior Janata Member of Parliament, complained in the 1979 Budget Session of the House of the People that duration of Parliament's sessions has of late been shrinking. He also complained that of the available time too little is being devoted to budgetary control and policy debates and too much to other less consequential matters. The Leader of the Opposition, C. M. Stephen (Congress I) supported Mishra, Atal Behari Vajpayee also complained of shrivelling sessions of Parliament.[85] A resolution passed at the instance of the General Purposes Committee of Parliament in 1955, laid down criteria for the duration of sessions. By and large these recommendations were followed until 1980. As against an average of 25 weeks per year in earlier days, it only met for 19 weeks in 1980 and 21 weeks in 1981. "By itself, this curtailment in the duration of Parliament's sessions," says Atal Behari Vajpayee, "would seem a minor matter. But in actual fact, it is symptomatic of the present Government's allergy to parliamentary accountability, bordering on contempt for the institution and a desire to limit its role." [86] But will extension in the duration of Parliament serve any useful purpose in the presence of absenteeism and thinness in attendance except a toll on the exchequer ?

It is time that Parlilament itself decided on how to improve its own functioning. As Speaker Balram Jakhar suggested and some Members of Parliament are also seriously concerned over this, for going in for the Committee system; that each Member is attached to one or more Committees dealing with a specific subject and they would specialise in the subject concerned with the help and cooperation of the Ministry concerned. This would perhaps facilitate more serious functioning by the Member while the duration of the plenary session could be gainfully reduced.

Whatever be the remedy, the present malaise of conspicuous absenteeism of Members of Parliament must be sternly checked and here the Opposition must accept its due share for this sordid state of affairs. When Athens was a democracy then a Greek dramatist, Aristophanes, said about its people :

> "It's your fault, people of Athens who live
> On public money, but all you think about
> Is private gain, every man for himself."

Obviously Aristophanes meant the politicians of Athens who were losing the essence of democracy while they were still working a democratic constitution. It is equally applicable to parliamentarians in India because their functions and performance is betrayal of the trust reposed in them by the vast concourse of humanity that voted them to be their representatives.

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CHAPTER XI

The Supreme Court

Constitution of the Supreme Court

The Constitution provided for the establishment of a Supreme Court of India consisting of a Chief Justice and until Parliament by law provided a larger number, not less than seven Judges. The Supreme Court (Number of Judges) Act, 1956, raised the maximum number of Judges to ten and this number was again raised in 1960 to fourteen including the Chief Justice. The Supreme Court (Number of Judges) Amendment Act, 1977, provided that the maximum number of Judges, excluding the Chief Justice, shall be 17. It has since been increased to 26.

There is no minimum number of Judges fixed by the Constitution, except for the provision in Article 145 relating to Rules of Court. Clause (3) of this Article provides that the minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law and to the interpretation of the Constitution or for the purpose of hearing any reference under Article 143, advisory jurisdiction of the Court, shall be five. The Constitution (Forty-second Amendment) Act, 1976, inserted a new Article 144A which provided that the minimum number of Judges constituting the Bench for disposal of questions relating to the constitutional validity of laws would be seven. But the Constitution (Forty-third Amendment) Act, 1977, omitted Article 144A thereby restoring the original position. Article 145 (2) empowers the Supreme Court, with the approval of the President, to make rules, subject to the number of five Judges constituting a Constitutional Bench, the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts. Rules of the Supreme Court provide that subject to other provisions of these rules, every cause, appeal or matter shall be heard by a Bench consisting of not less than three Judges nominated by the Chief Justice.

If at any time there is no quorum of Judges available to continue or hold any session of the Supreme Court, the Chief Justice of India, may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request a Judge of the High Court, qualified to be a Judge of the Supreme Court, to attend the sittings of the Court as an *ad hoc* judge for such period as may be necessary. He shall remain a High Court Judge and his duties at the Supreme Court are additional, but during his attendance at the Supreme Court he has all the jurisdiction, powers and privileges of a Supreme Court Judge.

The Constitution also provides that the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court[1] to sit and act as a Judge of the Supreme Court. While so sitting and acting he is entitled to such allowances as the President may by order determine and has all the jurisdiction, power and privileges of a Judge of the Supreme Court, "but shall not otherwise be deemed to be, a Judge of that Court." It is important to note that while absence of a quorum of the permanent Judges of the Supreme Court is a condition for the appointment of an *ad hoc* Judge, there is such condition when a retired Judge of the Supreme or Federal Court or a person who held the office of a Judge of a High Court is requested to sit and act as a Judge of the Supreme Court. He may be asked to sit and act at any time by the Chief Justice with the previous consent of the President.

A person to be appointed a Judge of the Supreme Court must be a citizen of India and has been a Judge of one or more High Courts for five successive years or an advocate of one or more High Courts for ten successive years or is, in the opinion of the President, an eminent jurist. Every Judge of the Supreme Court is appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Su-

1. Inserted by the Constitution (Fifteenth Amendment) Act, 1963.

preme Court and of the High Courts as the President may deem necessary for such a purpose, but the Chief Justice of India must always be consulted.[2] A Judge holds office until he attains the age of sixty-five years.[3] He may, by writing under his hand addressed to the President, resign his office.[4] He is also liable to be removed from his office by an order of the President after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.[5] Parliament may regulate by law the procedure for the presentation of the address and for the investigation or proof of the misbehavior or incapacity of a Judge. No person who has held office of a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India after retirement or resignation or removal from office. Before entering upon his office a Judge makes and subscribes before the President or some other person appointed in that behalf by him an oath or affirmation that he shall to the best of his ability, knowledge and judgment perform the duties of his office without fear or favour, affection or ill will and that he will uphold the Constitution and the laws.

Appointment of Chief Justice

The appointment of A.N. Ray, a sitting Judge of the Supreme Court, as Chief Justice of India, on the retirement of S.M. Sikri in April 1973, in supersession of three others,[6] who were senior to him on the Bench, precipitated an unprecedented situation in the history of the Judiciary in India. The three Judges whose claims to the office of the Chief Justice were overlooked resigned. In Parliament and elsewhere, there was a sharp reaction to the appointment of Justice Ray with accusations of political motivation behind it. The Supreme Court Bar Association as also the Bar Associations of High Courts in all the States, barring a sprinkling of individual members, passed resolutions protesting against the action of the Union Government. The resentment was more bitter when Justice M.H. Beg superseded Justice H.R. Khanna early in 1977.

Article 124(2) provides for the appointment of Judges of the Supreme Court by the President after consultation with the Chief Justice of India and such of the Judges of the Supreme Court and High Courts in the States as he may deem necessary. But no such provision exists in the matter of appointment of a Chief Justice. Hitherto the practice was to appoint the seniormost Judge of the Supreme Court as Chief Justice in consultation with the retiring Chief Justice. In the appointment of Justice Ray this practice was not followed and the retiring Chief Justice, S. M. Sikri, was never consulted at any stage. Chief Justice Sikri came to know of the appointment, as he said in a statement, only through the news broadcast by the All India Radio, Delhi station.[7] A point of law was raised in the Delhi High Court in respect of Ray's appointment. The petitioner prayed for a writ of *quo warranto* against the Chief Justice of India on the ground that the appointment of Justice Ray was in violation of Article 124 (2) as the mandatory consultation was not made and as the rule of seniority, which inheres in that Article, was not followed and that the appointment made was *mala fide*. By the time the writ petition was filed the Judges who had been superseded resigned and the petition was rejected.

The Law Commission, chaired by M. C. Setalvad and containing such distinguished

2. The Chief Justice of India, Y.V. Chandrachud, expressed the opinion that the prevailing system of appointment of Judges deserved a "decent burial." He suggested that the responsibility of recommending names for appointments that at present rested exclusively on the discretion of the Chief Justice, be entrusted to a body which may include three Judges, two members of the bar, two representatives of the Government, and two nominees of the Opposition. The idea was to make merit a critical criterion by making the selection process an open one. Justice P.N. Bhagwat, too, felt that the existing constitutional provisions were not adequate. Instead, there should be a collegium to make recommendations. He did not spell out its composition. But a committee on the reforms of the Indian legal system, at the conference organised by the Indian Law Institute under the chairmanship of Soli Sorabjee, suggested setting up a collegium comprising the Chief Justice of India and three seniormost Judges should decide upon the appointment of Judges and the decision of the collegium should be submitted to the President and it must be binding on the Government of India.
3. The Constitution (Fifteenth Amendment) Act, 1963, inserted clause (2A) in Article 124 providing that the age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.
4. Justice Baharul Islam resigned in January 1983 in order to contest a House of the People seat in Assam due to be held in mid-February 1983.
5. Article 124(4).
6. Justices J.M. Shelat, K.S. Hegde and A.N. Grover.
7. *The Tribune*, Chandigarh, April 29, 1973.

members as G. S. Pathak, S. M. Sikri, M. C. Chagla, N. A. Palkhivala, had urged in 1958 that succession of an office of this character (Chief Justice) should not be "regulated by mere seniority." The Commission emphasized the point that a successful Chief Justice needed qualities of leadership and administrative ability not expected of his associates, however erudite and senior in their tenure in the Court. They even made a special plea for youth "carrying a freshness and vigour of mind which have their advantages as maturity and experience flowing from age." They suggested the possibility of taking a person from "outside;" preferably from the Chief Justices of the various High Courts or outstanding Judges of such Courts. The Commission observed, "It is therefore necessary to set a healthy convention that appointment to the office of the Chief Justice rests on special consideration, and does not as a matter of course go to the seniormost puisne Judge." The Study Team of the Administrative Reforms Commission, whose Chairman C.D. Deshmukh was, recognised this point and recommended that "seniority-based elevations resulting in markedly short tenures," as in the case of the Chief Justice, should be altered.

At 61, Justice Ray had a term close to four years in contrast to weeks and months which Justice Shelat and Hegde could look forward to if they had been appointed in succession according to the convention of seniority while the third of the superseded Judges, A. N. Grover, would had enjoyed a longer tenure than Justice Ray if he had been selected. The Government, once it decided to break the sequence of seniority, probably decided to go in for what it considered to be the most suitable choice.

The seniority convention has not been followed in the appointment of Chief Justices of High Courts or to elevation from High Courts to the Supreme Court.[8] The seniority rule in the appointment of the Chief Justice of India has, therefore, no legal basis. But it is fair enough to question the timing of the Government's decision to break with the convention and practice of all these years. Although the Government had accepted the Law Commission's recommendations in 1960, it had not felt it necessary to put the same in effect until April 1973, except in the appointment of P. B. Gajendragadkar as Chief Justice under more extenuating circumstances. Nowhere is a convention so suddenly thrown to the winds, remarked Justice M. Hidayatullah, "immediately after the delivery of the judgment." Shelat, Hegde and Grover were members of the thirteen-member Constitution Bench which heard the *Kesavananda Bharati* case and delivered the judgment on April 24, 1973. The intentions of the Government became suspect and a wild cry went around the country that the Government was penalising the Judges for their independence and impartiality.

A public controversy on the appointment of the Chief Justice again started much earlier to the retirement of M. H. Beg on February 22, 1978. The two seniormost Judges were Y.N. Chandrachud and P. N. Bhagawati. Fifty-two public men and advocates in Bombay[9] issued on January 6, 1978 a memorandum questioning the desirability of the Union Government appointing either Justice Y.V. Chandrachud or Justice P. N. Bhagwati as the Chief Justice of India on the ground that in their view they did not qualify for this office of the highest importance, because both had decided against the citizen and in favour of the State in the *Habeas Corpus* case during the Emergency."[10]

In a separate Press statement, M.C. Chagla too argued against the appointment of Justice Chandrachud because of his "misdeed" during the emergency which "is a very grave one" because he held in the *Habeas Corpus* case along with his three other colleagues and against the emphatic opinion of his senior colleague, Mr. Justice H. R. Khanna and nine High Courts, that, by reason of the Presidential decree suspending Article 21, no one had the right to move Courts for a writ of *habeas corpus* against his order of detention, however illegal, unjustified or *mala fide* the order might have been. He appealed even to Jayaprakash Narayan "to raise his voice

8. A.N. Grover was appointed to the Supreme Court in 1968 when two other Judges, including the Chief Justice, were senior to him in the Punjab and Haryana High Court. Ranjit Singh Sarkaria of the same Court was elevated to the Supreme Court Bench leaving behind many Judges, including the Chief Justice, senior to him. J.R. Madholkar, a Bombay High Court Judge, was appointed Supreme Court Judge in 1960 superseding all the Chief Justices of High Courts in India, as his position amongst permanent judges of the various High Courts was at No. 7. A.N. Ray came to the Supreme Court superseding many judges of the West Bengal High Court.
9. Among the signatories were S.M. Joshi, A.D. Gorwala, Mrs. Durga Bhagwat, Marathi Writer, A.I. Samson, a retired Judge, Ram Jethmalani, Iqbal Chagla. A.G. Noorani, Anil Diwan, S.K. Mukherji and R. Mathalone.
10. As reproduced in *The Times of India*, New Delhi, January 7, 1978.

against what might be considered as a national disgrace and I also appeal to our Prime Minister (Morarji Desai) to intervene and not to permit this appointment to be made which is contrary to the highest standards of judicial office."[11] But the Government appointed Justice Y.V. Chandrachud to succeed Justice M. H. Beg as Chief Justice of India and upheld the principle of seniority. In pursuance of this principle P. N. Bhagwati succeeded Chandrachud and R. S. Pathak succeeded Bhagwati on his retirement on December 31, 1986. Ranganath Mishra succeeded Chief Justice Pathak and K.N. Singh succeeded Mishra. K. N. Singh had a tenure of just two weeks. He was succeeded by Chief Justice M. H. Kania.

The Law Commission's 80th Report on "the appointment of Judges" was presented to the Council of States on January 28, 1980. The Report was prepared by its former Chairman, Justice H. R. Khanna.[12] It recommended that the principle of seniority should be strictly followed by the Government in the appointment of the Chief Justice of the Supreme Court. The Commission said that departure from this principle in the past had aroused controversy and affected the image of the office of the Chief Justice. It was observed that "The vesting of unbridled power in the executive to depart from this principle may be absurd." The Commission suggested that, if at all, the Government proposes to depart from this principle of seniority, the matter should be referred to a panel consisting of all the siting Judges of the Supreme Court. In case of difference of opinion, the decision of the majority view would prevail.

As for the other Judges of the Supreme Court, the report suggested that the Chief Justice of India should consult two of his seniormost colleagues before recommending a name. His recommendation to the President should reproduce the views of each of them. Any recommendation of the Chief Justice which carried the concurrence of his two seniormost colleagues should normally be accepted. The Commission also suggested that "no one should be appointed to the Supreme Court as Judge unless for a period of not less than seven years he has snapped all affiliations with political parties and unless during the preceding period of seven years he has distinguished himself for his independence, dispassionate approach and freedom from political prejudices, bias or leaning." Merit alone should be the consideration for the appointment of Judges and no consideration should be shown to the fact that certain minorities are not too well represented on the Bench. Even where regard is to be had for representation of different regions, the best person from the region should be appointed.

Independence of the Judiciary

The members of the Constituent Assembly envisaged the judiciary as a bastion of rights and justice and in their efforts to achieve this ideal they were careful to keep it out of politics. How was politics to be kept out of the Courts ? "The Assembly's answer", as Granville Austin says, "was to strengthen the walls of the fortress with constitutional provisions."[13] The suggestions of the Sapru Committee were their guide in this respect. The Committee had recommended that Judges of the Supreme Court should be appointed by the Head of the State in consultation with the Chief Justice of India and they should be removed from office on grounds of misbehavior or infirmity of the mind by the Head of the State with the concurrence of a special tribunal.[14] The salaries of the judges and their strength was to be fixed by the constitution and would be neither varied to a Judge's advantage or disadvantage without the sanction of the Head of the State and the recommendation of the Supreme Court and the Government. The Committee, however, rejected the idea of an address by Parliament, which was used in England for the removal of judges because it did not consider it right and proper that judge's conduct should form the subject of discussion in the heated atmosphere of a political Assembly."[15]

The members of the *Ad Hoc* Committee on the Supreme Court appointed by the Constituent Assembly, took a somewhat different view of these matters, but the Assembly ultimately framed provisions closer to those of the Sapru Committee. In the matter of the Appointment of the judges the *Ad Hoc* Committee sought greater safeguards and declared that it would not be "expedient" to leave their appointments "to the unfettered discretion of the President of the Un-

11. *Ibid.*
12. Besides Justice Khanna, the other signatories to the Report were S.M. Shankar, T.S. Krishnamurthy Iyer and P.M. Bakshi.
13. Granville Austin, *The Indian Constitution : Cornerstone of a Nation,* pp. 175-76.
14. *Sapru Report,* clause 13, pp. xi-xii.
15. *Ibid,* para 226,198.

ion." The Committee suggested that the President should nominate puisne Judges with the concurrence of the Chief Justice, and this nomination would then be subject to confirmation by a panel composed of Chief Justices of High Courts, some members of both Houses of Parliament, and the law officers of the Union. In the alternative, the panel of Chief Justices of the High Courts should submit three names to the President who would choose one of them with the concurrence of the Chief Justice of India.[16]

The Union Constitution Committee agreed with the suggestion of the Ad Hoc Committee that the salaries, allowances, etc., of the Judges should not be included in the Constitution, but did not accept the suggestions for the selection of Judges. Instead, returning to the method of the Sapru Report, it recommended that Judges be appointed by the President in consultation with the Chief Justice and such other Judges of the Supreme or High Courts as might be necessary.[17] The Constituent Assembly accepted this recommendation with little debate and this provision ultimately became part of the constitution.[18] But there was a sharp divergence of opinion on the removal of the Judges. Alladi Krishnaswami Ayyar proposed that Judges should be removed by the President for incapacity or proved misbehaviour on an address by both Houses of Parliament. It was opposed by M. A. Ayyangar. He proposed that they should be removed by a special tribunal consisting of sitting and former Supreme and High Court Judges.[19] The Constituent Assembly adopted Ayyar's amendment and finally it became Article 124 (4) of the Constitution. Ayyar also defended the exclusion from the Constitution laying down the salaries of Judges. He believed that "from the very nature of things" all such provisions could not be included in the Constitution, which should embody only the "main heads". It should be left, he maintained, for a "Judicature Act to be passed by the Assembly to implement the powers that are conferred under the Constitution."[20] The Drafting Committee did not agree with Ayyar on this point.

The Drafting Committee framed nearly all the judicial provisions in its meetings from December 10 to 17, 1947. The Committee set the number of Judges at seven, subject to change by Parliament, and they retired on attaining the age of sixty years. Their qualifications were also laid down and the procedure for removal from office was stiffened by requiring the address of Parliament passed in each House by a majority of total membership of that House and two-thirds majority of the members of that House present and voting. The judges were debarred from practising at the Bar after retirement. Their salaries, allowances, leave and pensions were to be determined by Parliament and until it did so they were to be as laid down in a Schedule to the Draft Constitution. But none of the rights and privileges of a Judge could be varied to a Judge's disadvantage during his tenure of office.

The Constituent Assembly undertook detailed consideration of the judicial provisions of the Draft Constitution on May 24, 1949. The appointment of the Judges still remained a matter of concern and one of the Assembly members, S. L. Saxena, suggested that their appointments should be confirmed by two-thirds of the members of both the Houses of Parliament so that their independence may not be "compromised."[21] But Ambedkar did not agree. He defended the draft proviso which was finally adopted.[22] The matter of salaries, allowances, etc., of the Judges was another point of keen discussion. The ultimate decision in this respect was taken by the Cabinet and approved by the Assembly. Patel circulated a secret note on May 31, 1949 in the Cabinet. It recapitulated the previous discussions on this point and noted that in the light of these discussions and the views of Chief Justice and the Prime Minister, he had agreed that in order to have "a first rate Judiciary in India" the salaries of the Judges should be fixed in the Constitution in order to attract "first rate men to accept these appointments." The note also listed the salaries and allowances considered to be necessary to achieve the goal of "a first rate judiciary in India."[23]

Ambedkar, accordingly, moved on July 30, 1948 a new Article 104 in the Draft Constitution that Judges should be paid the salaries specified

16. *Ad Hoc Committee Report*, para 15-16; *Reports. First Series*, p. 66.
17. Minutes of the meeting of the Union Constitution Committee, June 11, 1947. *Reports, First Series*, p. 57.
18. Article 124 (2).
19. Minutes of the meeting of the Union Constitution Committee. *Reports, First Series*. p. 895. Removal by a tribunal had B.N. Rau's support also.
20. *Ibid*, p. 890.
21. *Constituent Assembly Debates*, Vol. VII, p. 231.
22. *Ibid.*, p. 258.
23. Refer to Granville Austin, *The Indian Constitution : Cornerstone of a Nation*, pp. 182-83.

in the Second Schedule, but their privileges and allowances should be determined by Parliament and until Parliament decided on them, they should be specified in the Schedule. The Assembly adopted the new provision after a inconsequential debate.[24] Thus, the Constitution guarantees to the Judges of the Supreme Court both security of service and emoluments. These provisions are intended to make the Judiciary independent, impartial, incorruptible, and having the courage and conviction to do the right as defined by law.

There is, however, a lacuna in the system which impairs the guarantee of judicial independence of the Supreme Court Judges. Judges are permitted after their retirement or resignation chamber practice, which involved advisory work. The Law Commission deplored this concession and pointed out its repercussions. "The possibility of their being able to advise rich clients," the Report of the Commission said, "after their retirement may tend to affect their independence on the Bench. In any event, if judges are to be permitted to practise by giving advice after retirement, the public would be apt to think that in dealing with the cases of such litigants whom they may hope after retirement to be asked to advise, the judges do not act impartially."

Strictly speaking, M. Hidaytullah, a former Chief Justice of India, should not have accepted the post of the Vice-President. Nor P. N. Bhagawti would have agreed to his name to be proposed by the Opposition as one of consensus candidates for the post of the eighth Vice-President. Not long ago a report circulated that another former Chief Justice of India might be appointed ambassador to the United States. The number of retired Judges of the Supreme Court heading Commissions appointed by the Government of India and State Governments are innumerable to count and it looks as if Judges increasingly feel no compulsion in accepting assignments from the Government. Such appointments always give a feeling that some of the Judges want to stay on the right side of the Executive to have "something good" waiting for them in their days of retirement. People's confidence in the Judiciary is, consequently shaken.

Independence of judiciary militates against any commitment of Judges except to the Constitution and laws. It entails keeping the scales even in any dispute between the rich and the poor, the mighty and the weak, the State and the citizen. It calls for administration of justice without fear or favour. Such independence, postulates freedom from bias and refusal to get aligned to any party. A court room, says H. R. Khanna, a former Supreme Court Judge, "is not a pulpit nor a place for crusades in the robe of judges to propagate their favourite ideologies. Persons aligned with any political party or committed to some particular economic ideology cannot bring to bear a dispassionate approach to their task of deciding cases." He further adds a judge under "the scheme of our Constitution must be independent and impartial. He cannot, in order to be true to his office, worship simultaneously at two shrines–the shrine of justice and the shrine of his favourite political and economic ideology."

JURISDICTION OF THE COURT

General Provisions

The powers and functions of the Supreme Court are reflected in its jurisdiction. The Constitution vests the Supreme Court with original and appellate jurisdiction. The original jurisdiction mainly extends to matters regarding the interpretation of the provisions of the Constitution which arise between the Union and the States and the States *inter se*. The original jurisdiction also extends to issuing orders in the nature of writs for the enforcement of Fundamental Rights. The Constitution (Forty-second Amendment) Act, 1976, inserted a new Article 131A vesting in the Supreme Court the exclusive jurisdiction in regard to questions as to the constitutional validity of the central laws. The Constitution (Forty-fourth Amendment) Act, 1978, however, repealed Article 131 A.

The appellate jurisdiction of the Supreme Court extends to all matters from the High Courts in the States as well as from other specified tribunals. The Supreme Court may also grant special leave to appeal from any judgment, decree or final order of a High Court if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution.

There are some general provisions in the Constitution which sufficiently widen the scope of the Supreme Court's jurisdiction. The Supreme Court is declared to be a Court of record and has all the powers of such a Court including the power to punish for contempt of itself. A Court of record is a court whose acts and proceedings are enrolled for perpetual memory and

24. *Constituent Assembly Debates*, Vol. IX, pp. 10-13.

testimony. These records are of such high and super-eminent authority that their truth is not to be called in question in any court, though the Court of Record itself may amend clerical slips and errors. A Court of Record has the power to fine and imprison for contempt of its authority and the Constitution expressly provides for it.[25] The President may consult the Supreme Court if at any time it appears to him that a question of law, or fact, has arisen or is likely to arise, which is of such a nature and of such importance that it is expedient to obtain an opinion upon it.

The Constitution provides for the enlargement of the jurisdiction of the Supreme Court by the law of Parliament with respect to any matters in the Union List.[26] The Government of India and the Government of a State may confer by special agreement and if Parliament makes law to that effect, on the Supreme Court jurisdiction and power with respect to any matter within their common competence.[27] Such an enlargement of jurisdiction may be in respect of the original or appellate jurisdiction of the Supreme Court.

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for any purpose other than enforcement of Fundamental Rights.[28] While the power of the Supreme Court to issue directions, orders or writs for the enforcement of Fundamental Rights is conferred by the Constitution itself and is guaranteed by it, the power of the Supreme Court to issue directions, orders or writs for any other purpose depends on the Act of Parliament.

The Constitution (Forty-second Amendment) Act, 1976, inserted a new Article 139A providing that the Supreme Court may on an application made by the Attorney-General transfer to itself cases involving the same or substantially the same questions of law pending before the Supreme Court or a High Court or before two or more High Courts and dispose of all such cases. The Constitution (Forty-fourth Amendment) Act 1978, enlarged the scope of such transfer of cases by substituting a new clause (1) to article 139A and also adding a Proviso thereto. Article 139A(1) now provides that the Supreme Court may, if it is satisfied, on its own motion or on application made by the Attorney-General of India or by a party to any such case that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, withdraw the case or cases pending before the High Court or High Courts and dispose of all these cases itself; provided that the Supreme Court may after determining the said question of law return any case so withdrawn to the concerned High Court together with copy of its judgment and the High Court shall proceed to dispose of the case in conformity with such judgment.

The Constitution (Forty-fourth Amendment) Act, 1978 retained Clause 2 of Article 139A as provided in the Forty-second Amendment. It provides that the Supreme Court may, if it deems expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

Parliament may by law make provision for conferring on the Supreme Court such ancillary powers, not in- consistent with any of the provisions of the Constitution, as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by the Constitution.[29] Accordingly, Parliament has by the Code of Criminal Procedure (Amendment) Act, 1952, empowered the Supreme Court to transfer a criminal case or appeal from one High Court to another.

In recent times, the Supreme Court has assumed an important role in the field of public interest litigation and in the words of Chief Justice Y.V. Chandrachud the Court has become "a bulwark against all assumption and exercise of excessive powers" in cases like the Bhagalpur blindings, the flesh trade, detention of children and eviction of pavement dwellers.

Finally, the Supreme Court, subject to the provisions of any law made by Parliament and with the approval of the President, may make rules for regulating generally the practice and procedure of the Court.[30] In pursuance of this

25. Article 129.
26. Article 138(1).
27. Article 138 (2).
28. Article 139.
29. Article 140.
30. Article 145 (1).

provision, the Supreme Court has made the Supreme Court Rules, 1950.

Original Jurisdiction

In a federal polity the powers between the Union and the State Governments are delimited and demarcated and, accordingly, it necessitates the presence of an independent judicial authority empowered to interpret the Constitution and secure the rights of the federation and the federating units. The Constitution of India vests the Supreme Court with original and exclusive jurisdiction in any dispute :

(a) between the Union Government and one or more States; or

(b) between the Union Government and any States on one side and one or more States on the other; or

(c) between two or more States, if the dispute involves any question of law or fact on which the existence or extent of a legal right depends. That is to say, the despute between the Union and the States or between the States *inter se* must relate to some justiciable right. Where the claim made by one of the parties is not dependent on law or fact but on extra legal considerations and hypothetical assumptions, the Supreme Court has no original jurisdiction. Thus in order to involve the original jurisdiction of the Supreme Court two conditions must be present : (1) as to the parties, and (2) as to the nature of the dispute If these two conditions are not satisfied, a suit cannot be brought before the Supreme Court.

The Supreme Court does not entertain disputes, on its original side, to which citizens are a party. Suits by individuals against the Union or a State can be brought in ordinary courts and would come up to the Supreme Court only in appeal, if the requirements relating thereof are satisfied. The Constitution also excludes from the original jurisdiction disputes relating to water of inter-State rivers or river valleys referred to a special statutory tribunal, matters referred to the Finance Commission, adjustment of certain expenses between the Union and the States, and bar to interference by courts in disputes arising out of certain treaties, agreements, etc.

Where cases involving the same or substantially the same question of law of general importance are pending before the Supreme Court and one or more High Court or before two or more High Courts, the Supreme Court, if satisfied, on its own motion or on an application made by the Attorney-General of India or by a party to any such case withdraw the case before the High Court or High Courts to itself and dispose of all such cases; provided that the Supreme Court may after determining such questions of law return any case so withdrawn with a copy of its judgment to the High Court from which the case has been withdrawn, and the High Court shall on receipt of it proceed to dispose of the case in conformity with that judgment.

The Supreme Court has been invested with special jurisdiction and responsibility in the matter of the enforcement of Fundamental Rights and in exercise of this jurisdiction the Court has the power to issue directions, orders or writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiori,* whichever may be appropriate. The Constitution also provides that Parliament may by law confer on the Supreme Court power to issue directions, orders or writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari* for any purpose other than the enforcement of fundamental Rights. In the exercise of its original jurisdiction the Supreme Court may, thus, issue, directions or orders in the nature of these writs for the enforcement of Fundamental Rights and others purposes. Whereas the jurisdiction of the Supreme Court for issuing writs in the case of Fundamental Rights is concurrent with the High Courts under Article 226, the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights is guaranteed under Article 32. No such responsibility is laid on the High Courts. The Supreme Court held in *Romesh Thapar* v. *State of Madras* that Article 32 provides a guaranteed remedy for the enforcement of Fundamental Rights, and this remedial right is itself made a Fundamental Right. The Supreme Court is the protector and guarantor of fundamental rights and it cannot consistently with the responsibility so laid upon it refuse to entertain applications seeking protection against infringement of such rights. A citizen can resort directly for such relief to the Supreme Court without first resorting to the High Court under Article 226 of the Constitution." But the remedy under Article 32 is available only in the case of an infringement of a Fundamental Right and cannot be extended to cover cases of

infraction of any other constitutional right. The Supreme Court has also laid down that a petition under Article 32 must establish not only that impugned law is an infringement of a Fundamental Right but that it also affects or invades the Fundamental right of the petitioner guaranteed by the Constitution.

The Constitution (Thirty-ninth Amendment) Act, 1975, ousting the Supreme Court from exercising jurisdiction on matters relating to or connected with the election of a President or Vice-President has been rescinded and the old position under Article 71 (1) is restored.[31] All doubts and disputes arising out or in connection with the election of a President or Vice-President are inquired into and decided by the Supreme Court and its decision is final.

Appellate Jurisdiction

The appellate jurisdiction of the Supreme Court covers cases in constitutional matters (Article 132), civil and criminal cases (Articles 133, 134) and in cases by special leave of the Supreme Court against judgment, order, etc., of any court or tribunal in India (Article 136). The Supreme Court as the highest court of appeal stands at the apex of the Indian judicature. Its appellate jurisdiction is much wider than that of the Supreme Court of the United States which concerns itself only with cases arising out of federal jurisdiction, or the validity of laws. M.C. Setalvad said, in his speech at the inauguration ceremony of the Supreme court, that the writ of the Court "will run over territory extending to over two million square miles inhabited by a population of about 300 millions.....It can truly be said that the jurisdiction and powers of this court in their nature and extent are wider than those exercised by the High Courts of any country in the Commonwealth or by the Supreme Court of the USA....."In fact, the Supreme Court has shown willingness to entertain appeals not only from ordinary courts but also from industrial courts, election tribunals and other quasi-judicial bodies.

(i) *Constitutional cases.* An appeal lies to the Supreme Court from any judgment, decree or final order of a High Court in India, whether in a civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. The Constitution (Forty-fourth Amendment) Act, 1978, inserted Article 134(A) which provides that every High Court, passing or making a judgment, decree, final order, or sentence; under Article 132(1) or 133 (1) or 134 (1) may, if deems fit, on its own motion, and if an oral application is made, by or on behalf of the party aggrieved, immediately after passing or making of such judgment, final order or sentence shall determine whether a certificate that the case involves a substantial question of law as to the interpretation of the Constitution may be given or not. Where such a certificate is given any party in the case may appeal to the Supreme Court on the ground that the question of law, which is substantial, has been wrongly decided. Where the High Court has refused the issuing of such a certificate, the Supreme Court may, if it is satisfied, that the case involved a substantial question of law as to the interpretation of the Constitution, grant special leave, under Article 136, from such judgment, decree, final order or sentence. Prior to the Forty- fourth Amendment, the appellant, if the High Court had granted a certificate to appeal to the Supreme Court, could take other grounds, with the leave of the Supreme Court, also in support of his appeal and the new grounds taken might not be constitutional. This provision of Article 132 (3) has been omitted by the Forty-fourth Amendment.

It follows that the final authority for interpreting the Constitution rests with the Supreme Court whatever be the nature of the suit of proceedings. It may, however, be noted that the case appealed in the Supreme Court, either when the High Court grants a certificate or where the Supreme Court grants special leave, must involve a question of law and it must be a "substantial" question of law as to the interpretation of the Constitution. "Substantial" here means a question regarding which there is a difference of opinion and which has not been finally settled by a judicial decision. It must not be a question of fact and it must not be a question of interpretation of any other law which does not involve interpretation of the Constitution.

(ii) *Appeals in Civil matters.* Article 133 originally conferred a right to appeal to the Supreme Court in civil proceedings against a judgment, decree or final order of a High Court if it certified that the amount involved in disputes was not less than Rs. 20,000 or that it involved directly or indirectly some claim or question respecting property of that value, and that the case was fit one for appeal. But if the High Court's judgment

31. The Constitution (Forty-fourth Amendment) Act, 1978, S. 10.

confirmed a judgment of an inferior court a further certificate that the appeal involved some substantial question of law was required.

The right to appeal in civil cases involving Rs. 20,000 confronted the Supreme Court with the load of work which it could not cope with. The Law Commission recommended that valuation should not form the basis of an appeal case and it should be immediately dispensed with. Accordingly, the Thirtieth Amendment was passed in 1972 which provides that civil appeal shall lie with the Supreme Court if the High Court certified that the case involves a substantial question of law of general importance and that in the opinion of the High Court the said question needs to be decided by the Supreme Court. This the High Court may do, if it deems fit, on its own motion or on an oral application of the aggrieved party immediately after the passing or making of the judgment, decree or final order.[32] It means that civil appeals involving only important questions of law of general importance or a substantial question of law on the interpretation of the Constitution will go to the Supreme Court and valuation can not be the only reasonable and logical yardstick for a right to appeal. Moreover, no appeal shall, unless Parliament by Law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

(iii) *Appeals in Criminal Cases.* In criminal cases the appeal lies to the Supreme Court as of right in cases : (a) where a lower court passes an order of acquittal of an accused person but the High Court reverses the order of acquittal on appeal and sentences the accused person to death; (b) where the High Court withdraws for trial before itself any case from a subordinate court and, after trial, convicts the accused person to death; or (c) where the High Court certifies, under Article 134A, that the case is a fit one for appeal to the Supreme Court either on its own motion or on an oral application made by the aggrieved party immediately after passing the judgment. Parliament may by law confer on the Court any further powers to entertain and hear appeals from any judgment and final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

But so long as Parliament does not legislate as such the Constitution intends, that, except in cases referred to above, the State High Courts shall normally be the final courts of appeal in criminal matters. Hence where the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court it should do it in exceptional cases where it is manifest that by disregard of legal process or by violation of the principles of natural justice or otherwise substantial and grave injustice has been done.[33]

(iv) *Appeal by special leave.* Article 136 confers very wide and discretionary powers on the Supreme Court in the matter of granting special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in India, other than Military Tribunal and Court Martial. Whereas Articles 132 to 135 deal with ordinary appeals to the Supreme Court, Article 136 vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals by granting of special leave against any kind of judgment or order made by a court or tribunal in any cause or matter. It means that leave to appeal may be granted notwithstanding the limitations contained in Articles 132 to 135 and notwithstanding the fact that the High Court has refused leave to appeal. The power of the Supreme Court to grant special leave to appeal is, thus, not subject to any constitutional limitation. It is entirely left to the discretion of the Supreme Court. Broadly speaking, the Suprme Court would exercise this power to give relief to the aggrieved party in cases where the principles of natural justifice have been violated or a tribunal fails to exercise jurisdiction or acts in excess of jurisdiction or acts illegally, even though the party may have no footing on appeal as of right.

Moreover, the special leave to appeal cannot be only from a High Court. It may be from any court or tribunal, other than Military Tribunal and Court Martial, in the territory of India. The Supreme Court has, accordingly, power to grant special leave to appeal from the judgment or an interlocutory order of a court subordinate to the High Court or a tribunal, the duties and functions of which are similar in the nature of those of a court.[34] The Supreme Court has also held in *Raja*

32. Article 134A inst. by the Constitution (Forty-fourth Amendment) Act, 1978, S. 19.
33. *Mohinder Singh* v. *The State*, A.I.R. 1952 S.C. 415.
34. *Durga Shankar* v. *Raghuraj Singh*, A.I.R. 1954 S.C 520; *Bharat Bank Ltd.* v. *Employees of Bharat Bank*, A.I.R. 1950, S.C. 188.

Krishna Bose v. *Binod Kanungo* that even when the Legislature states the the orders of a tribunal under an Act like the Representation of the People Act shall be conclusive and final, the Court can interfere under Article 136 as the jurisdiction conferred by this Article cannot be taken away or whittled down by the Legislature. The discretion of the Court, so long as the provision of Article 136 remains, is unfettered.

As regards the precise extent of the jurisdiction under Article 136, the Supreme Court has held that "It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in the Supreme Court by the constitutional provision made in Article 136. The limitations, whatever may be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and exceptional situations. Beyond that it is not possible to fetter the exercise of this power by a set formula or Rule.[35] The Court, as said earlier, does not grant special leave to appeal unless it it specifically shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and the case in question presents feature of sufficient gravity to warrant a review of the decision appealed against.

Justice S. Murtaza Ali and O. Chinappa Reddy gave a new dimension to the interpretation of Article 136. Soundarapandian, brother of the deceased, had come to the Supreme Court against the acquittal of P.S.R. Sadhamantham by the High Court. The Court observed that the fact that the Criminal Procedure Code does not provide for private parties to move against acquittals, had not relevance to the question of the power of the Supreme Court under Article 136. The Supreme Court's appellate power under article 136, the Court ruled, not circumscribed by any limitation as to who may invoke it is "exercisable outside the purview of ordinary law" to meet the pressing demands of justice. It was the practice of Supreme Court to permit invocation of its plenary or appellate power under Article 136 in exceptional circumstances, as whether a question of law of general public importance arises or a decision shocks the conscience of the Court. But the Supreme Court can also interfere even with findings of fact, making no distinction between judgments of acquittal and conviction if the High Court had acted "perversely or othrwise improperly." The Court will not not abjure its duty to prevent violent miscarriage of justice by hesitating to interfere when interference is imperative, the Court observed.

In April 1979, the Supreme Court approached the Union Government with a suggestion that it should amend Article 136 to limit its powers to hear and admit only those special leave petitions which concerned constitutional matters. The Government expressed its inability to accept the suggestion, but advised the Supreme Court that it could itself restrict its powers to grant special leave to appeal. The rule about special leave petition till July 1978 was that it could be filed in the Supreme Court if the High Court against whose judgment an appeal was sought to be made had rejected permission. The rule was relaxed by the Supreme Court in July enabling an aggrieved party to come to it straight without waiting for the permission of the High Court concerned. Though the relaxation was aimed to helping the litigants, it caused a spurt in the number of special leave petitions compelling the Supreme Court to approach the Government for amending Article 136.

Advisory Jurisdiction

The President may under Article 143(1) make a reference to the Supreme Court for its consideration and opinion any question of law or fact which is of such a nature and of such public importance that it is expedient to obtain the Court's opinion on it. The President may refer such a question not only where it has actually arisen but also where it appears to the President that it is likely to arise. The President can, accordingly, refer to the Supreme Court the question whether a proposed Bill will be *intra vires* of the Constitution. Such references are heard by a Bench consisting of at least five Judges and the Court follows the procedure of a regular dispute that comes before it. The opinion of the Court is pronounced in open Court. It may not be a unanimous opinion and the dissenting Judges can give their separate opinion. But the opinion of the Supreme Court is not binding on the President as it is not of the nature of a judicial pronouncement. It is also not obligatory on the Supreme Court to give its opinion; it may or may not.

Under Clause (2) of Article 143 the President may refer to the Supreme Court for its opinion disputes arising out of any treaty, agree-

35. *Dhakeswari Cotton Mills Ltd.*v. *Commissioner of Income Tax*, A.I.R. 1955, S.C. 65.

ment, etc., which had been entered into or executed before the commencement of the Constitution. In the case of such references, it is obligatory for the Supreme Court to give its opinion to the President.

Technically, no court in India is bound by the advisory opinion of the Supreme Court but such opinions are always respected by the courts. The opinions given by the Supreme Court in the Delhi Laws Act, 1912, and the Kerala Education Bill, 1957, have often been referred to and cited in Courts. In the conflict between the Uttar Pradesh Legislative Assembly and the Allahabad High Court, it was argued before the Supreme Court that it was only in respect of matters falling within the powers, functions and duties of the President that he was competent to frame questions for the advisory opinion of the Supreme Court. The Court held that words in Article 143 (1) were wide enough to empower the President to forward to the Supreme Court for its advisory opinion any question of law or fact which had arisen or was likely to arise, provided it appeared to the President that such a question was of such a nature or such public importance that it was expedient to obtain the opinion of the Court on it.

A reference was made in connection with the Indo-Pakistan Agreement relating to the exchange of enclaves (Berubari Union, 1958) in 1960. The opinion of the Supreme Court in this case was against the views of the Government of India which had held that Parliament was competent to implement the agreement by an ordinary law and that amendment of the Constitution was not necessary. In 1974, a reference made to the Supreme Court related to the Presidential election due to be held in August, 1974. The Opposition parties in Parliament had contended that the electoral college constituted for the election of the President, under Article 54 of the Constitution, would be incomplete as the Gujarat Assembly stood dissolved with the imposition of the President's rule in that State. After prolonged hearings the Supreme Court rendered the opinion that the Presidential election must be held before the expiration of the term of the office of the present incumbent irrespective of the dissolution of one or more Legislative Assemblies and their members not participating in the Presidential election. Another reference made by the President to the Supreme Court related to the Jammu and Kashmir Resettlement Bill, 1982, which has since become an Act of the State Legislature. The latest reference made by the President related to the Cauvery water dispute between the State of Karnataka and Tamil Nadu.

The advisory function of the Supreme Court is analogous to that performed by the Privy Council in Britain. Section 4 of the Judicial Committee Act, 1883, provides that His Majesty may refer to the Judicial Committee of the Privy Council "such matters whatsoever as His Majesty shall think fit." The Committee shall, where a reference is made to it, hear and consider the same and advise the Queen. But the dissenting opinions are not delivered in the Privy Council. Similarly, Section 60 of the Canadian Supreme Court Act, 1906, authorises the Governor-General to refer important questions of law and fact and obtain the opinion of the Supreme Court thereon. The Supreme Court is bound to entertain and answer the references and the answers are advisory. But the Constitution of the United States does not contain any corresponding provision and the Supreme Court has constantly refused to pronounce advisory opinion upon abstract question of law. To do so, the Supreme court held, would be incompatible with the position the Court occupies in the Constitution of the United States.[36]

There had been a good deal of difference of opinion among the jurists and political thinkers in India on the advisability of placing a constitutional obligation on the Court to give an opinion to the Executive on questions of law.[37] The framers of the Constitution, however, thought it expedient to confer advisory functions on the Supreme Court.[38]

Power to Review its own Decisions

Like the highest court in other countries the Supreme Court of India, too, is not bound by its own decisions. It can reconsider its own decisions provided that such review is in the interest of the community and justice. An application for review may be filed with the Registrar of the Court within thirty days after its judgment is delivered in appeal and it should briefly and distinctly state the grounds for review. The application for re-

36. *Muskrat* v. *United States*.
37. Also refer to opinion of Professor Flex Frankfurter (a Judge of the U.S. Supreme Court). This is quoted in Shukla, V.N., *Constitution of India*, p. 142.
38. Section 213 of the Government of India Act, 1935, conferred advisory jurisdiction on the Federal Court.

view must also be accompanied by a certificate by the Counsel that it is supported by proper grounds. Any such review is undertaken by a larger Bench than the one which passed the original judgment. The Supreme Court's power to review its earlier decisions helps it to correct any decision which may be deemed erroneous.

JUDICIAL REVIEW

Supreme Court, Guardian of the Constitution

The power of the courts to interpret the Constitution and to secure its supremacy is inherent in any Constitution which provides Government by defined and limited powers. Madison explained, "a limited constitution.....one which contains specified exceptions to the legislative authority.....can be preserved in no other way but through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges amount to nothing." This point was succinctly explained by Chief Justice Marshall of the United States in *Marbury* v. *Madison*. He declared that the Supreme Court determined the constitutionality or otherwise of laws, Federal and State, and this power with the Supreme Court was a necessary consequence of the Constitution, otherwise declaration of the supremacy of the Constitution had no meaning.

Like the Constitution of the United States, there is no express provision in the Constitution of India declaring the Constitution to be the supreme law of the land. Perhaps, the Constitution makers deemed such a declaration superfluous as they would have believed it to be clearly enough implied when all organs of the Government, Union and State, owe their origin to the Constitution and derive powers therefrom and the Constitution itself cannot be altered except in the manner specifically laid down in Article 368. The status of the Constitution as fundamental law, Justice K.K. Mathew, a former judge of the Supreme Court of India, said, was determined by two factors : its efficient cause, and its formal cause. The efficient cause was none other than the "supposed original will of the People of India." The Constitution was "the covenant of the people of India and embodiment of their conception of the higher law governing current legislation and other activities of the Government. Else, there was no significance in a written Constitution framed by the People." The original will was prior and superior to the will of any representative assembly of the people and as the expression of the original will the Constitution is binding on all subsequent legislative, executive and judicial bodies. Under the aspect of formal cause, he said, the Constitution was fundamental law in that it prescribed "certain decisive principles of lasting value of political rule to ensure the just exercise of powers by the State."[39]

The philosophy of judicial review is, thus, rooted in the principle that Constitution is the fundamental law. As the Constitution is primarily an instrument to distribute political power, it is hard to escape the necessity of some body with authority to declare when the prescribed distribution has been disturbed. The Supreme Court is expressly given the power to interpret the Constitution (Articles 132/147), declare the law (Article 141), and enforce the limitations of the rule of distribution of legislative powers between Parliament and State Legislatures, and other constitutional limitations, for instance, prohibition against enactment of laws in derogation to the Fundamental Rights (Article 12 (2)). It is the duty of the Judges to uphold the Constitution and owe "true faith and allegiance to the Constitution of India."[40] When a contradiction between the Constitution and enacted law is alleged to exist and is proved in the course of judicial proceedings, it is the duty of the Judges to resolve the contradiction. If it cannot be harmonised and violates the Constitution, the enactment should be declared void and consequently unconstitutional thereby rendering it inoperative. Justice Das, in *A. K. Gopalan* v. *The State of Madras*, observed,".....in so far as there is any limitation on the legislative power the Court must, on a complaint whether such limitation has been transgressed, and if there has been any transgression the Court is bound by its oath to uphold the Constitution."

The power of judicial review exercised by the Supreme Court does in no way make it a rival to Parliament. Nor does it assume such extensive powers of judicial review as its counterpart in the United States exercises. There is difference in the very nature of the federation in the two countries. The exhaustive enumeration of powers of the

39. First Sir Tej Bahadur Sapru Memorial Lecture on "Democracy and Judicial Review", *The Statesman*, New Delhi, March 27, 1976.
40. Form of Oath or affirmation made by a Judge before entering upon his office, Article 124(6), Third Schedule IV.

Union and the States, the vesting of residuary power and the power of issuing directions in the Union, and overriding powers in emergencies minimise the possibilities of disputes to arise between the Union and the States. The power of invalidating laws vested in the Supreme Court on the ground of contravention of the Fundamental Rights differs from that of the United States' Supreme Court. There is, under the Constitution of India, no 'due process' clause and no doctrine of 'judicial supremacy.' The 'due process' clause and the doctrine of 'judicial supremacy' have made the United States Supreme Court the arbiter of social policy; a kind of super-legislature. In India, on the other hand, there had prevailed, till 1967, the doctrine of legislative supremacy, subject to the constitutional limitations. The Supreme Court exercised the judicial review power not out of any desire "to tilt at legislative authority in crusader's spirit, but in the discharge of the duty plainly laid upon" the Court by the Constitution.[41] It declared an Act void where it was in clear contravention of the Constitutional limitations, but it did not question the policy involved in the legislation. While the Court was always vigilant to prevent any encroachment by the Legislature upon the Fundamental Rights, it was yet not a third chamber sitting in judgment on the policy laid down by the Legislature and embodied in the legislation which the Supreme Court was considering. The Supreme Court itself defined its role in *A. K. Gopalan* v. *The State of Madras*. It was observed that in India the position of the judiciary "is somewhere between the Courts in England and the United States....no scope in India to play the role of the Supreme Court in the United States." The authority of the Court was to be exercised in such a manner that neither Parliament nor the Executive should exceed the limits set on them by the Constitution and if they ever did, the Court had the power to halt it.

But the majority judgment in the *Golak Nath* case disturbed the balance hitherto maintained. In 1951, the Supreme Court rejected the argument that the amending power of Parliament under Article 368 did not extend to Fundamental Rights. The decision was unanimous. The same argument was again rejected in 1964 but by a majority of three Judges against two. It was raised again in 1967 and this time the Court accepted the argument by a majority of six to five. Chief Justice Subbo Rao defined Fundamental Rights as primordial, transcendental and immutable and were, therefore, beyond the reach of Parliament and the amending power under Article 368. Two important results flowed from the majority judgment in the *Golak Nath* case. Firstly, it placed a permanent restraint on power of Parliament to pass any amendment of the Constitution which had the effect of taking away or abridging Fundamental Rights. Secondly, the Directive Principles of State Policy should be enforced without amending the Fundamental Rights. Thus, the delicate and difficult problem of adjusting Fundamental Rights and restrictions thereon to the ever-changing and unforeseen social demands became the sole responsibility of the judiciary and, consequently, ultimate supremacy under the Constitution came to be vested neither in the people nor in their representatives in Paliament but what at any given moment was the majority opinion of the Supreme Court.

This assertion of judicial power led to furious controversy and the parliamentarians repudiated it through the Twenty-fourth Amendment of the Constitution, which restored to Parliament the power to amend the Constitution including the Fundamental Rights. The Twenty-fifth Amendment inserted a new immunity clause 31-C which provided that no law seeking to enforce the Directive Principles under clauses (b) and (c) of Article 39[42] shall be invalid on the ground that it violated some Fundamental Rights in Articles 14, 19 or 31. Both these Constitutional Amendments were challenged in the Supreme Court. In the *Kesavananda Bharati* case the Supreme Court reversed its earlier decision on the *Golak Nath* case and upheld the power of Parliament to amend by way of addition, variation or repeal any provision of the Constitution provided it did not alter the basic structure of the Constitution.

But there was a considerable difference of opinion among the Judges delivering the majority judgment in the *Kesavananda Bharati* case on the concept of basic structure or framework of

41. *The State of Madras* v. *V.G. Rao*. A.I.R. 1952 S.C. 196.

42. Clauses (b) and (c) of Article 39 provide that the State shall, in particular, direct its policy towards securing :
"(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

the Constitution. As the concept remained undefined, the last word with respect to what exactly did it mean and consequently Parliament's power to amend the Constitution still rested with the Supreme Court. The validity of the Thirty-ninth Amendment ousting the jurisdiction of the Supreme Court to decide disputes relating to the election of the President, the Vice-President, the Prime Minister and the Speaker of the House of the People was questioned in Mrs. Indira Gandhi's election appeal against the judgment of the Allahabad High Court disqualifying her for a period of six years, on the ground that it evaded the authority of the Supreme Court, which was at the apex of the judiciary, and, therefore, altered the basic structure of the Constitution. The majority of the Judges answered in the affirmative.

The Constitution (Forty-second Amendment) Act, 1976, denied the Supreme Court the jurisdiction to go into the validity of any amendment passed by Parliament in accordance with the procedure laid down in Article 368, and the power of Parliament to amend any provision of the Constitution was without any limitation whatsoever. The role of the Supreme Court as protector of Fundamental Rights was reduced first by making the Directive Principles supersede the Fundamental Rights and then circumventing the jurisdiction of the Courts under Article 368 (4) to question the validity of any amendment. Then, the Supreme Court alone could examine the validity of any Central Law, but it could not be declared invalid unless two-thirds of the Judges of a mandatory seven-member Bench declared it so. The Forty-third Amendment (1977) omitted Article 144-A and restored the *status quo ante,* that is, a Constitution Bench consisting of five[43] or more Judges would decide all cases of constitutional validity.

The Janata Party was committed to undo the distortions of the Forty-second Amendment, but the Constitution (Forty-fourth Amendment) Act, 1978, did not touch Clauses (4) and (5) of Article 368 and the position with regard to the amending power of Parliament *vis-a-vis* the Supreme Court remained as it was before the commencement of the Forty-fourth Amendment. The validity of the Forty-second Amendment was questioned in the *Minerva Mills* case and the Supreme Court struck down these two Clauses (4) and (5) of Article 368. Likewise, Article 31C, which provided that all laws which have nexus with any Directive Principles of State Policy "shall be deemed to be void" on the ground that they are "inconsistent with, or take away or abridge any of the rights conferred by any provision" of the Chapter on Fundamental Rights was also struck down. The Court held that to abrogate the Fundamental Rights while supporting to give effect to the Directive Principles is to disarray the essential feature of the Constitution.

The Constitution (Forty-second Amendment) Act, 1976, was intended to assert the sovereignty, and supremacy of Parliament, especially with regard to its power to amend the Constitution. The need for such an amendment had arisen because the Supreme Court's decision in the *Keshavananda Bharati* case laying down by a majority that Parliament has no power to alter the basic features of the Constitution and without defining what those basic features were."

The theory about the sovereignty of Parliament in a federal polity is not even a legal fiction. This point was convincingly explained by Motilal Setalvad in the Hamlyn lectures which he delivered at the Inns of Court in London in 1960. He pointed out, "The very purpose of a written constitution is the demarcation of the powers of the different departments of Governments so that the exercise of these powers may be limited to their particular fields. In countries governed by a written constitution, as India is, the supreme authority is not Parliament but the Constitution." Setalvad then explained why the founding fathers had in this regard departed from the British practice which they had so closely followed in other respects. "The Indian legislatures," he said, "had not the age- old ancestry and traditions of the British Parliament. India is a country of vast distances inhabited by People....in varying stages of development. A democracy means a Government by the majority. In such a Government it becomes necessary to safeguard the essential freedoms of the citizens, and particularly of the citizens constituting the minorities." The distinctions made by Setalvad have been much forcefully emphasised by an eminent scholar D. W. Brogan. Speaking about the United States of America he said, "American law and constitu-

43. Article 145(3) provides : "The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 (Advisory opinion) shall be five."

tional practice are designed to minimise inequalities between States, between sections, between minorities and majorities and between individuals, while English practice is designed to give full effect to majority opinion—although there is no greater inequality than that of members."

What Brogn says about the United States equally applies to India. In a highly pluralist society as one in India united in a federal polity no single constitutional organ of Government can be invested with sovereign power and, accordingly, there can be no escape from a system of checks and balances so that there can be no concentration of power in any particular organ of the State. A federation postulates dual polity and it establishes a government of limited and divided powers with a view to safeguarding the encroachment of such powers by any other authority at any level. The arrangement of Government as established by the Indian Constitution was designed to promote co-operation among the three branches as well as checking and balancing them.

The Preamble to the Constitution declared the broad and enduring purposes which it was expected to serve. In seeking these purposes the Constitution may be amended from time to time. But these purposes embodied the aspirations of the entire people, who gave the Constitution to themselves, and not to the transient and changing objects of a particular party. It is, therefore, the supremacy of the Constitution and it cannot be made the object of the vagaries of the fluctuating majorities.

Role of the Supreme Court

On January 28, 1950, the Supreme Court of India held its inaugural sitting. Since then, it has been functioning as one of the foremost institutions of India's republican democracy and as an instrument of rule of law. Placed as it is at the apex of a single unified judiciary, it is not only the final court of appeal in all matters, but has also been made the ultimate interpreter of the laws and the Constitution, the arbiter of federal disputes and the constitutional interpreter of the Fundamental Rights of individuals and of minority groups. In addition to ordinary channels of appeal the Constitution confers on the Supreme Court extraordinary powers where justice might require the interference of the Court. Its power to grant special leave to appeal from the decision of any court or tribunal, except military tribunals, is not subject to constitutional limitations. It is entirely the discretion of the Supreme Court and it may give relief to any aggrieved party even to a private party, in cases where the principles of natural justice have been violated or if the court at any level had acted perversely or otherwise improperly.

The Supreme Court in recent times has assumed the role of a "bulwark against the assumptions and exercise of excessive powers" as Chief Justice Y.V. Chandrachud said at the Law Day function held on November 26, 1981. He pointed out that a liberal democracy like one in India did not mean that the will of the people was law. The people's will become a law only "when it conformed to recognised normative procedures and did not violated the fundamentals of the Constitution." That is why, the Chief Justice asserted, the courts were the hand-maids of liberal democracy without which there could be no independent authority to examine "whether the limits of popular will were exceeded in any manner." Consequently, the court is today engaged in "public interest" cases and more and more lawyers, journalists and law leaders are coming to the Court with grievances of the poor and the illiterate, the silent majority. The view taken by the Court in liberalising the rules of *locus standi* has widened the scope of citizen to move the Court even when his fundamental rights are not violated. Any members of the public, can move the Court even by writing a letter and the Court entertains the letter as a writ petition "casting aside all procedural and technical rules."[44] The Chief Justice in December 1982, gave a call for what he termed "judicial activism" by which courts "interpreted and created laws" for the welfare for whom they were intended.

The Supreme Court is a Court of record and the acts and proceedings of such a Court are of such high and super-eminent authority that their truth is not to be called in question in any court. Its decisions are binding on all courts in India and the supreme and overriding status of its judgments is placed beyond the reach of ordinary legislative enactments. The consultative functions of the Supreme Court are important inasmuch as it can pronounce advisory opinion even upon abstract questions of law. The opinion so expressed is not of the nature of judgment and,

44. Justice P.N. Bhagwati, "How the Supreme Court Enforces Citizen's rights," Express Magazine, *Indian Express*, New Delhi, January 31, 1982.

accordingly, not binding on the courts, although such opinions carry great weight and authority with all courts and tribunals.

The writ of the Supreme Court runs over more than eight hundred million people. In sheer amplitude of judicial powers and the variety and range of jurisdictions, the Supreme Court of India is without a rival in any other system in the world. Alladi Krishnaswami Ayyar rightly observed that the Supreme Court has more powers than any other Supreme Court of the world. The United States Supreme Court does not have the kind of wide appellate jurisdiction as the Supreme Court of India exercises.

But the primary duty of the Supreme Court is to interpret the Constitution and determine laws. Sir Maurice Gwyer, at the inaugural sitting of the Federal Court on December 6, 1937, said that while declaring and interpreting the law, "it will always be our endeavour to look at the Constitution of India, whether in its present form or in any other form which it may assume hereafter, not with the cold eye of the anatomist, but as a living and breathing organism which contains within itself, as all life must, the seeds of future growth and development.... The Federal Court will declare and interpret the law and that I am convinced, in no spirit of formal or barren legalism. But I do not want to be misunderstood. This Court can, and I hope will, secure that those political forces and currents, which alone can give vitality to Constitution, have free play within the limits of the law; but it cannot under the cover of interpretation alter or amend the law; that must be left to other authorities. Nevertheless, within the limits I have indicated, I do not doubt that the Federal Court can make and perhaps decisive contribution towards the evolution of India into a great and ordered nation, a link between the East and the West, but with a policy and civilization of its own." Chief Justice Kania said on the day of the inaugural sitting of the Supreme Court on January 28, 1950 : "The Supreme Court, an all-india Court, will stand firm and aloof from party politics and political theories. It is unconcerned with the changes in the government. The Court stands to administer the law for the time being in force, has goodwill and sympathy for all, but is allied to none. Occupying that position we hope and trust the Court will maintain the high traditions of the nation and in stabilising the roots of civilisation which have twice been threatened and shaken by two world wars, and maintain the fundamental principles of justice which are the emblem of God." The first Attorney-General of India, M.C. Setalvad, in his speech at the inaugural sitting, *inter alia,* said : "The detailed enumeration of fundamental rights in the Constitution and the provisions which enable them to be reasonably restricted will need wise and discriminating decisions. On the Court will fall the dedicated and difficult task of ensuring the citizen the enjoyment of his guaranteed rights consistently with the rights of the society and the safety of the State."

The lengthy statements on the inaugural functions on two momentous occasions succinctly explain the role of the highest court of the country in shaping her destiny. The Supreme Court cannot afford to remain oblivious of the "new atmosphere," as Nehru put it, in the country and should not interpret the Constitution and law, to use Maurice Gwyer's words, in "a spirit of formal or barren legalism." Justice Frankfurter of the United States Supreme Court said that statesmanship was needed on all hands to avoid a tragic and dangerous confrontation between the legislative and judicial wings of the government and this could be avoided by judicial restraints. Justice Holmes, of the same court, had also remarked that the Supreme Court was not the only guardian of the peoples' freedom and that Legislatures were equally their guardians.

The Legislatures are, indeed, equal guardians of the people's freedom, provided the majority party should not go amuck. No doubt, the Supreme Court performs judicial functions, but it has to deal with many issues and controversies which bristle with partisan origins and political consequences. A constitutional court, interpreting the Constitution and determining law, however, moderate and self-restrained, cannot evade or avoid pronouncement on matters political irrespective of its own views on judicial activitism. It cannot reamin unconcerned about complaints of arbitrariness and turn a blind eye to unreasonable invasions of fundamental rights. It cannot countenance, except at the cost of sacrificing its noble mission and mandate under the Constitution, any excessive claims of unlimited power.

The first two decades of the Supreme Court's career were fruitful years. As the custodian of the constitutional system and the legal process it strove to stabilise the aspirations of the new nation, strove to relieve the tensions confronting a developing country, resolved the conflicts of a diverse and open society and accommodated and adjudicated antagonistic demands

for justice. In the performance of this arduous and stupendous task the Supreme Court acted with utmost erudition, understanding and wisdom and commanded the confidence and respect of the people in a larger measure than any other institution in the country. But of late, there has been an erosion in the dignity and prestige of the Supreme Court and it began with the decision in the *Golak Nath* case. The judgment in the Bank Nationalisation case and the Presidential Order derecognising the Princes met with the cry that the Court was reactionary. It was around this time that Mohan Kumaramangalam made his plea that India's Judiciary should be committed on certain socio-economic matters and his views were put into action by appointing A. N. Ray Chief Justice of India (April 1973) in preference to presumably three not "committed" colleagues, except to the Constitution. This policy of judicial appointments was universally denounced in India as subversive to the independence of the judiciary.

The appointments to the higher judiciary have ever been the subject of criticism and the sentiments expressed by eminent jurists are too numerous to quote. As far back as 1958, the Law Commission in its Fourteenth Report referred to the unsatisfactory selection of judicial personnel and remarked : ".....The almost universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence. It has been said that these selections appear to have been made out of considerations of political expediency or regional or communal sentiments. Some of the members of the Bar appointed to the Bench did not occupy the front rank in the profession, either in the matter of the legal equipment or of the volume of their practice at the Bar. A number of more capable and deserving persons appear to have been ignored for reasons that can stem only from political or communal or similar grounds....." Justice M.H. Beg again superseded Justice H. R. Khanna on the retirement of Chief Justice Ray and when Beg was to retire in February 1978, the appointment of the Chief Justice took an ugly shape. Y.V. Chandrachud, the seniormost Judge, was vehemently criticised and it became a matter of widespread public controversy. The memorandum by fifty-two public men of Bombay addressed to the Minister of Law and Justice to the Government of India, on January 1978, said, in part that the doctrine of "Committed Judges", as it came to be called, was implemented by the Government of India not only in the matter of appointment to the Supreme Court Bench but also in regard to appointment to the High Court Benches. How far it proceeded became evident when Judges of the Supreme Court and of the High Courts began going around delivering political speeches, a practice which was criticised by the Supreme Court itself. The result of this policy became all too clear during the dark months of the Emergency when Mr. Justice A.N. Ray, the then Chief Justice of India, and some of his colleagues showed themselves to be, in the words of Lord Atkin apropos his colleagues in the famous case of *Liversidge* vs. *Anderson* "more executive minded than the executive." M.C. Chagla considered the appointment of Chandrachud "would be making ourselves the laughing stock of the whole judicial world. Mr. Chandrachud would have been ostracised–but instead of doing that, we are going to give him the accolade of judicial approval."

In the *Habeas Corpus* case[45] Chief Justice Ray, Justice Beg, Chandrachud and Bhagwati concurred in holding that "In view of the Presidential Order dated 17th June 1975 no person has any *locus standi* to move any writ petition under Article 226 before a High Court for *habeas corpus* or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by malafides factual or legal or is based on extraneous considerations." Justice H. R. Khanna alone dissented and he had to pay a price for his dissent. He was superseded in January 1977, and Justice M.H. Beg was appointed the Chief Justice of India. On July 14, 1976, Jayaprakash Narayan in a statement had said, "As far as the judiciary, I must say that the High Courts have come out with flying colours in the present crisis. But the record of the Supreme Court is unfortunately very disappointing mainly because Mrs. Gandhi has packed it with pliant and submissive judges except for a few"

Even if it is conceded that the future norm for appointment to the Bench shall be on political basis, even then it is expected that judges would maintain postures of strict neutrality. Once elevated to the Bench their biases would be constitutional and judicial not political or ideological. "The primary duty of the judges", says H. R.

45. *A.D.M. Jaba vur* vs. *S. Shukla.*

Khanna, former Judge of the Supreme Court, "is to uphold the constitution and the law without fear or favour and in doing so they cannot allow any political ideology which might have caught their fancy to colour decision. The sobering reflection has always to be there for judges, as said by a great master, that the Constitution is meant not merely for their way of thinking but for people of fundamentally differing views."[46]

The same standard applies to a judge's post retirement demeanour, Judges of the Supreme Court are supposed to retire quietly into oblivion. It is universally recognized that a Judge's conduct should be free from temptation or fear even after he leaves the Bench. That, at least, was the intent of the framers of the Constitution in inserting Article 123 (7), that prescribes that no person who has held office as a Judge of the Supreme Court shall plead or act in any Court or before any authority within the territory of India. But if sitting Judges near retirement start hankering after entering or returning to politics, it is likely to affect their judicial decisions. The unhealthy trend of sitting Judges entering active politics started in 1967. The then Chief Justice Subba Rao, committed judicial impropriety when he accepted the Opposition's invitation to become its candidate for the 1969 Presidential poll and resigned from his office. Subba Rao's willingness to become the Opposition's nominee soon after his crucial judgment in the *I.G. Golak Nath* vs. *The State of Punjab* was widely criticised and propelled the highest Court of the country into political controversy. The image of the Supreme Court–as being above politics and political leanings–never recovered from the jolt given to it by Subba Rao. The former Judge of the Supreme Court H. R. Khanna was caught in the political web by accepting to enter Charan Singh's Ministry, though he immediately afterwards resigned. But the political lure was there when he contested the 1982 Presidential election as combined Opposition's candidate knowing it full well that the chance of his success was really remote. The image of the Supreme Court received another grievous blow when a sitting Supreme Court Judge Baharul Islam, who was due for retirement by the end of February in 1983, resigned in January to be able to contest the Barpeta House of the People seat on the Congress (I) ticket.[47] Baharural Islam's resignation came barely a month after his (and Justice R.B. Mishra's) controversial judgment in the Patna Urban Cooperative case in favour of the Bihar Chief Minister Dr. Jagannath Mishra, who stood accused of forgery and corruption. The third Judge hearing the case, Justice V.D. Tulzapurkar, dissented. Perhaps, there might be no link between Baharual Islam's resignation and his judgment in the Patna Urban Cooperative case, but his subsequent actions compounded the widespread misgivings which that judgment had aroused.[48] A review application was filed in the Supreme Court pleading that Justice Baharul Islam's judgment was politically motivated as he became Congress (I) nominee for the Barpeta House of the People seat. The Court unanimously decided to hear the appeal challenging the judgment of the Patna High Court upholding withdrawal of the criminal case against Dr. Jagannath Mishra.

There is evidence to suggest that a few of the Judges of the Supreme Court adjusted their antenna to "know what would suit the Government in power." Judgments in one era compared to those of another show how things changed under two different regimes. A note was circulated among High Courts after the triumph of the Janata Party in the Parliamentary poll in March 1977. The note on behalf of a Committee of Judges of the Supreme Court proposed a code of ethics for the Judges to check "the deterioration of standards and fall in values." The main point emphasized was "a solemn undertaking" not to drink either in public or private. This was obviously to please Prime Minister Morarji Desai. But the most objectionable part of the code was to be enforced through law. Chief Justice Beg, in his covering letter dated October 10, 1977, to the Chief Justices of High Courts, said, "I am glad to be able to inform you that the present Government is very willing to strengthen our hands and to help us move in the right direction by any legislation which may be necessary for this purpose." S.N. Mishra raised the issue in the House of the People on December 9, 1977, and observed that the code of conduct was a clear insult to the Judges of the High Courts and it would be a sad

46. "Judges As Knight Errants," H.R. Khanna, *The Times of India*, New Delhi, February 5, 1983.
47. Retired Judges have entered politics, like K.S. Hegde, H.R. Khanna and H.R. Gokhale, but they did not resign as Judges, like Subba Rao and Baharul Islam.
48. Baharul Islam was a member of the undivided Congress and represented it in the Council of States for two terms before being inducted as a Judge of the Assam High Court. He retired in 1980 and soon thereafter was elevated to the Supreme Court.

day when the Judges would have to obtain character certificates periodically even if they be from their fellow-Judges. Chief Justice Beg actually issued and was later forced to withdraw, a contempt notice to newspapers who transmitted to the people the code of ethics, in the formulation of which the Chief Justice of India had taken the initiative, and had questioned its propriety. Chief Justice Beg had dismissed, it is important to recall, the Allahabad High Court judgment setting aside Mrs. Indira Gandhi's election as erroneous though Mrs. Gandhi's appeal before the Supreme Court was heard in terms of an amended electoral law which precluded the examination of the merits of the case. In laying down his office of Chief Justice of India in February 1978, Justice M.H. Beg gave expression to the noble sentiments of a Judge when he said that if the Judges of the Supreme Court had become pliant to the dictates or directions of the Executive, the sooner the Court was wound up the better for the country.

After his elevation in February 1978, Chief Justice Y.V. Chandrachud made an unprecedented public statement that he had spent sleepless nights, but he did not have the courage to give a contrary decision in the *Habeas Corpus* case in 1975. Justice Chandrachud did not act according to the dictates of his conscience and clearly violated the oath of his office that he "will duly and faithfully and to the best of his ability, knowledge and judgment perform the duties of his office without fear or favour, affection or ill will." Justice H.R. Khanna, who gave the dissenting judgment, and Judges of the nine High Courts who had ruled likewise, were also living under the same grave circumstances and conditions of 1975. Justice Khanna's dissenting judgment was acclaimed by the foreign press and jurists. *The New York Times* commented that it deserved to be engraved in letters of gold.

Chief Justice Chandrachud did another disservice to his august office. The issue relating to charges of corruption against some family members of the Prime Minister Morarji Desai and Home Minister Charan Singh were highly contentious and for months continued to arouse considerable passion. Later in 1978 when the Council of States was paralysed for weeks because the Government was not willing to abide by its resolution calling for probe either by a commission of inquiry or the Committee of the House, then, the Information Minister Lal Krishna Advani, who was also the leader of the Council of States (Rajya Sabha), had felt constrained to resign from the Union Government. The Prime Minister, Morarji Desai, thereupon agreed to refer the matter to the Chief Justice of India to look into it and the Chief Justice agreed. But he finally refused to look into the charges of corruption. Many eyebrows were raised that the Government should have resorted to the expedient of referring the matter to the Chief Justice of India and that he would have agreed to look into it. The Chief Justice's final conclusion to refuse it was neither flattering to his prestige nor to the dignity of the office he occupied. If he would have agreed, as he did it initially, and whatever his findings would have been, the office of the Chief Justice of India would have been dragged into public controversy damaging the image of the highest judiciary in the country. Charan Singh said in the House of the People on December 2, 1978 that the Chief Justice would have no authority to compel attendance of any person for being examined as a witness or production of documents.

The image of Justice P. N. Bhagwati is more controversial. In their memorandum, addressed to the Law Minister, fifty-two public men and advocates in Bombay, wrote, "though public memory is short, one can recall Justice Bhagwati sharing public platforms with the then leaders of the emergency. He made no secret of his identification with the then current 'ism' and with the leaders of emergency." Justice Bhagwati wrote a letter to Mrs. Indira Gandhi in eulogistic terms lauding her electoral victory in January 1980. In the opening paragraph of his letter he wrote : "It is a most remarkable achievement of which you, your friends and well-wishers can be justly proud." He reminded her of the heavy responsibility that rested on her shoulders and people's expectations from her. He had gone on to add, "you have become the symbol of the hope and aspirations of the poor hungry millions of India who had so far nothing to hope for and nothing to live for and who are now looking up to you lifting them from dirt and squalor and freeing them from poverty and ignorance...." The concluding paragraph said, "today, the reddish glow of the rising sun is holding out the promise of a bright sunshine. May, that sunshine fill our hearts with joy and bring comfort and cheer to the poor, half naked, hungry millions of our countrymen. That is my only prayer to God on this occasion."

Justice Bhagwati's letter attracted severe criticism among the public, the Bar and among some Judges of the Supreme Court too. The

Supreme Court Bar Association even decided, to censure the conduct of the Judge which was "contrary to the principle of judicial independence." Addressing the Indian Law Institute, New Delhi, on March 22, 1980, Justice T.D. Tulzapurkar voiced his concern over some Judges hovering round the seats of political power. He said that they hobnobbed with Ministers and law officers and sought favours. Referring indirectly to the letter of Justice Bhagwati, he said, "The recent news items which you all must have read have caused great anguish and pain to me and many of my colleagues who have expressed their resentment. It is a very disturbing trend damaging the image of judiciary from within and must be deprecated." He reiterated that if Judges started sending "buquets of congratulatory letters to a political leader on is political victory, eulogizing him on the assumption of a high office in adulatory terms, the people's faith in the judiciary will be shaken; and if this can happen now, the day will not be far off when Judges may, even seek appointments and wait on him and other persons who count and that will be the saddest day for the country and the judiciary."[49]

There was another aspect of Justice Bhagwati's letter to Mrs. Indira Gandhi. He had mentioned that mounting arrears had been clogging the judicial machinery and stressed that the position was almost desperate and "yet there did not seem to be any sense of urgency in the court." This raised a pertinent question whether it was decorus for a sitting Judge to criticise brother Judges on the Bench and that too in a letter written to the Prime Minister.

These are trying times in the history of the Supreme Court and the lustre that it shed is fast fading. A judge, especially of the highest court of the country, like Ceasar's wife, must be above suspicion. Threats to judicial independence and integrity emanate from within and without. Vigilant guardians of an independent judiciary are always alert and ready to protest encroachments from the domain of the Supreme Court. But not much thought has been given to the harm that judges' public postures might inflict on the judiciary. A former Judge of the Supreme Court, H. R. Khanna, said, "Institutions are normally strong enough to withstand external threats but they give way and start crumbling when some of those manning them, attack them from within and indulge in what is akin to an act of sabotage.[50] Earlier, C.K. Daphtry speaking at the Law Day function organised by the Supreme Court Bar Association, expressed his unhappiness at the lack of unity among judges. Referring to the Judges case, he pointed out that today when a judge referred to another judge "as my brother, "it would be doubtful if he meant it all.[51] When Kuldip Nayyar gave to his article, appearing in *Indian Express*, March 1980, the caption, "Judge, Judge Thyself," he epitomised the whole truth.

The Chief Justice of India was seriously mauled when his colleagues constituting the seven-member Bench, which heard the Judges case, decided to make public his affidavit containing his confidential discussions with the Law Ministry. The four to three majority judgment held that the Chief Justice of India's opinion did not have primacy over that of the Delhi High Court's Chief Justice. Justice P. N. Bhagwati even described the Chief Justice of India as a "litigant" in the case. N.A. Palkhivala commented that Justice Bhagwati was in error in describing the Chief Justice of India a "'litigant" into "contest" with Chief Justice K.B. N. Singh of the Patna High Court. He added, "No doubt every Judge has the jurisdiction to decide rightly or wrongly. But what is regrettable is that the judgment of Bhagwati J. dealing with the transfer of Chief Justice Singh was couched in language which occasionally lapses into questionable taste when dealing with the conduct and affidavit of the Chief Justice of India."[52] Justice Bhagwati found Chief Justice Chandrachud's affidavit as "vague and indefinite, delightfully vague" a "little intriguing" and "the Constitution incantation." No less damage was done to the position of the Chief Justice of India and the importance of upholding the prestige of that office by the statement of President Neelam Sanjiva Reddy made on his behalf by the Solicitor-General in the Supreme Court, to the effect that the Chief Justice of India did not have any personal discussion with him regarding the transfer of Chief Justice K.B. N. Singh of the Patna High Court to Madras High Court, despite the erroneous interpretation of Sanjiva Reddy on the ex-

49. *The Statesman*, New Delhi, March 23, 1980.
50. "Judges as Knight Errants : A case of self-inflicted injury," *The Times of India*, New Delhi, February 5, 1983.
51. As reported in *The Hindustan Times*, New Delhi, November 27, 1981.
52. Nani A. Palkhivala, "Aspects of the Judge's Case–I." *Indian Express*, New Delhi, February 3, 1982.

pression "President of India." Reddy had interpreted the expression to mean the person of the President as distinct from the office of the President.

During recent years another unhealthy practice has developed. Some Judges of the Supreme Court expound their own views and question the soundness of judgments of other Judges outside the Chambers. While delivering the lecture on : "Judiciary–Attacks and Survival" at Pune on October 28, 1992, Justice V. D. Tulzapurkar criticised the interim order in the Bihar Blinding cases passed by a Bench consisting of Justices, P. N. Bhagwati and R. S. Pathak and charged these two Judges for violating the spirit of Article 21 of the Constitution which ensures fair trial in conformity to procedure prescribed by law.

Close on the heels of Justice Tulzapurkar's Pune lecture came a speech by Justice O. Chinnappa Reddy at a seminar on "Socialism, Constitution and the country Today" in New Delhi. Justice Reddy called for the transfer of the Right to work, living wage and decent conditions of work from the Chapter on the Directive Principles of State Policy to the Chapter on Fundamental Rights. He advocated abolition of private ownership of means of production, denounced the "bourgeoisie feeling class" and ended up by declaring that "it is not the judiciary but Parliament and the Government that have failed the people." Justice Reddy ctricised the Indian Constitution for not being a true socialist Constitution. To add to it, the speeches delivered by Justice P. N. Bhagwati, D. A. Desai, and O. Chinnappa Reddy at the Indo-German Seminar reeked of politics and were, undoubtedly highly controversial in glaring contrast to the Paper submitted at the seminar by Justice E.E. Venkataramiah. The greatest asset of the Judiciary is public perception and acceptance of it as an impartial body. Decisions of Judiciary suspected of partisanship, philosophical slants and ideological tilts cannot be acceptable to all sections in an open society as one in India

"What is more perturbing," says Soli J. Sorabjee, "is the phenomenon, which, if unchecked, is now threatening to become a trend, of delivering judgments of utmost importance without any real judicial consultation and deliberation among all members of the bench who heard the case."[53] The requirement that the judgment of a court should be the result of collective deliberation composing the Court is founded upon the fundamental principles essential to the due administration of justice. Every judicial act which is done by several ought to be concluded after discussion and after deliberately weighing the arguments of each other. That was stated way back in 1884 by Sir Henry Barnes, Chief Justice of the Allahabad High Court and was reiterated about a century later in 1980 by Justice P.N. Bhagwati as a judge of the Supreme Court.

The first departure from this sound principle was made by Chief Justice Subba Rao in April 1967 in a case involving the important issue of a fundamental right. The case was heard by a five-member bench and the judgment was reserved. On April 9, 1967 Subba Rao announced that he would resign his office of Chief Justice on April 11 and contest the Presidential election. He had prepared the majority judgment for himself and Justices Shelat and Vaidyalingam, but "apparently" the draft judgment was not circulated earlier to other judges, Hidaytullah and Bachawat, and delivered the Judgment on April 10. Justice Hidaytullah and Bachawat expressed their dissent the same day but gave reasons subsequently on April 24, 1967. Since it was not in keeping with the temperament and spirit of those times to publicly criticise in judgments their judicial brethren who participated in the case, Justice Hidaytullah in his dissenting judgment made a significant comment "For reasons, into which it is not necessary to go here, our judgment could not be delivered with the judgment of the Chief Justice."

In one of the most far-reaching judgments in the *Keshavananda Bharati* case there was no exchange of draft judgments amongst the judges who constituted the Bench, although in this case the unique doctrine of basic structure was evolved.[54] The same disturbing phenomenon recurred in 1980, and again in a case of great constitutional importance–*Minerva Mills*–involving the constitutionality of certain provisions of the Constitution (Forty-second Amendment) Act, 1976. This time Justice P.N. Bhagwati com-

53. "The Supreme Court of India–I : Erosion of Judicial Collectivism," *The Times of India*, New Delhi, January 5, 1987.
54. According to Justice Chandrachud, who sided with the majority, there was not sufficient time, after the conclusion of arguments, for an exchange of draft judgments amongst all the judges : "We sat in full strength of 13 to hear the case and I hoped that after a free and frank exchange of thoughts, I will be able to share the views of someone or the other of my esteemed brothers. But we were overtaken by adventitious circumstances....."

plained that as a dissenting member that no judicial conference or discussion among the judges was held nor any draft judgment circulated with the result that he did not have the benefit of knowing the reasons for the judgment of the Chief Justice Chandrachud and three other judges who spoke for the majority. After deploring this practice Justice Bhagwati warned that, "this would introduce a chaotic situation in the judicial process and it would be an unhealthy precedent.....For good measure he confronted the majority with Chandrachud's dicta in *Keshavananda Bharati* about the necessity of a free and frank exchange of views."

In the celebrated Judges case (*S.D. Gupta* vs. *Union of India*) it was just a day before the due date of retirement of Justice A.C. Gupta, a member of the Bench hearing the case, that full draft of the judgments was circulated amongst the judges constituting the Bench. Impending retirement of Chief Justice Chandrachud on July 11, 1985 was "another casualty" in the case of *Tulsiram Patil*. In the dissenting judgment Justice Thakkar "bitterly protested" about the receipt of the full draft of the judgment running into 237 pages prepared by Justice Madon for the majority, only in the morning of July 11, less than 3 hours before the deadline for pronouncement of the judgment in the Court.[55] With anguish he said, "If only there had been a meeting in order to have a dialogue, there might have been a meeting of minds.

The retirement syndrome struck again. The Constitution Bench presided over by Chief Justice P. N. Bhagwati heard the case concerning the withdrawal of prosecution against Jagannath Mishra, former Chief Minister of Bihar. Judgment was reserved in September 1986. Chief Justice Bhagwati was due to retire on December 21, 1986. The judgment was pronounced on December 20, 1986, which happened to be Saturday, a day before Bhagwati's retirement and, once again, without discussion amongst the judges. Justice Khalid, who was a party to the majority judgment, had gone on record as saying, "It is unfortunate that a discussion could not be held about this case by the judges who heard this case." Justice Khalid was even unhappy at the admission of the review petition in the *Jagannath Mishra* case. He was particularly dismayed at the review Bench deciding to admit the petition and rehear the case but choosing not to give any reason for its views.

In the final analysis, the deep fissure running through the Supreme Court is in the full glare of public eye. The Supreme Court dismayed its admirers by its extraordinary action in holding a sitting at the residence of the Chief Justice on a Saturday morning to stay the execution of Billa and Ranga in order to examine whether or not the President acted correctly in rejecting their mercy petition. The Court later vacated this stay as summarily as it had ordered it. This was followed by the *West Bengal Electoral Rolls* case by the unhappy twist and turns before its final hearing by a five-member Bench. Five senior counsels through a signed statement charged the three-member Bench with bias and urged that the *West Bengal Electoral Rolls* case be shifted to some other Bench. Equally regrettable was the tussle that developed between the three-member Bench headed by Justice D. A. Desai and Justice Sabysachi Mukherjee of the Calcutta High Court, who had given a stay order in the *West Bengal Electoral Rolls* case. Justice Mukherjee took exception to the "unprecedented" directive conveying to him vacating the stay order by the Supreme Court through a "lightening " telephone call.

The pattern of four to three or three to two divisions on all substantive issues, the diametric divergence of views expressed by the judges, the whispers of political affiliations of individual judges, the clash of personal ambitions and mutual conflicts and clashes have created an irreparable damage to the highest Court of the country. H. R. Khanna has correctly said, "It takes years to build the institutions.....But institutions can be destroyed overnight by the ambition, waywardness, caprice, pettiness or weakness of adventurists or self-seekers. They can be damaged also by those who cave in under fear and even by the well-intentioned who might be carried away by the exuberance of their ideas."[56]

In the end , it must be emphasised that an honest and independent judiciary is the most valuable possession a democracy can claim to have. Nothing must be done to malign or denigrate it. Let not the judges give cause for complaint or murmur. Not only their judicial dealings but their conduct out of court must inspire public

55. Justice A.C. Gupta was due to retire on December 31, 1981 and the full draft of the judgments was circulated on December 30.

56. "Judges As Knight Errants : A case of self-inflicted injury," The *Times of India*, New Delhi, February 5, 1983.

confidence. A.N. Grover, a former Judge of the Supreme Court, with a nostalgic pride recalls the esteem with which the judiciary was held a little over fifty years ago. The social intermixing, he recounts, between he Bench and the Bar was more of a "public nature like participation in big parties and functions and individual members of the Bar and the Bench did not socialise except in a few cases." After attaining independence, over the years, a good deal of change has come about and appropriately Justice Grover gives to his article the caption : "Judiciary–fall in values." There has been, he writes, erosion of solidarity, the code of professional ethics is not being properly followed in certain cases, the social intermixing between lawyers and judges had increased "to an extent where there is lot of loose talk of favouritism." It was essentially the Bar that was responsible for initiation of inquiring into the corruption charges against the Supreme Court Judge, Mr. Justice V. Ramaswami.

CHAPTER XII

The Union and the States

Original Units of the Union

Before 1947 there were politically two Indias—British India governed by the British Crown according to the laws passed, from time to time, by the British Parliament and enactments of the Indian Legislature, and the Indian States, 562 in number and popularly known as Princely States, under the suzerainty of the British Crown but for the most part under the personal rule of the Princes. In 1950 when the new Constitution of the Republic of India came into being, the Indian States had been liquidated and the country welded into a single political entity. Three different patterns were discernible in the process of the integration into the Union of India.

(1) 216 State having a population of over 19 million were merged in the neighboring Provinces which were designated in the Constitution as Part A States;

(2) 61 States having a population of about 7 million were constituted into newly formed Centrally administered units known as Part C States;

(3) 275 States with a population of about 35 million were integrated to create new administrative units, namely, Part B States of Rajasthan, Madhya Bharat, Travncore-Cochin, Saurashtra and Patiala and East Punjab States Union (PEPSU);and

(4) 3 States, Hyderabad, Jammu and Kashmir and Mysore, became Part B states.

The constituent units of the Union of India were, therefore, divided into three categories. Part A States included Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Uttar Pradesh, West Bengal and Punjab. The Andhra State was created in 1953 out of Telgu-speaking areas of Madras, making a total of 10. Part B States were 8–Hyderabad, Jammu and Kashimir, Madhya Bharat, Mysore, Patiala and Punjab States Union, Rajasthan, Saurashtra, and Tranvancore-Cochin. The State of Jammu and Kashmir though specified in Part B of the First Schedule, was placed on a special footing and there was special Article (370) in the Constitution dealing with it. Other Part B States were covered by Article 238 in Part VII of the Constitution.

Part C States consisted of Ajmer, Bhopal, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura, and Vindhya Pradesh. Cooch-Behar, which was originally a Part C State, was subsequently merged with West Bengal. Bilaspur too, was originally a separate unit in Part C but was afterwards merged in Himachal Pradesh.

Disparate status of the units

A peculiar feature of the Indian Constitution was the disparate status of the constituent units. The Drafting Committee explained the reasons for this disparity. The Committee said, "In article I of the Draft, India has been described a Union of States. For uniformity the Committee has thought it desirable to describe the units of the Union in the new Constitution as States, whether they are known at present as Governors' Provinces, or Chief Commissioners' Provinces or Indian States. Some differences between the units there will undoubtedly remain in the new Constitution and in order to mark this difference, the Committee has divided the States into three classes; those enumerated in Part I of the First Schedule, those enumerated in Part II, and those enumerated in Part III."[1] The Constitution maintained this difference and established three categories of States giving each category a pattern and status of its own.

The status of Part A and Part B States was based on the concept of federalism, but there were a few significant differences in the governance of the two. The head of a Part A State was a Governor appointed by the President for a period of five years. The head of a Part B State was a Rajpramukh and the office was hereditary in the case of Hyderabad and Mysore. The head of the Jammu and Kashmir State was designated Sadar-i-Riyasat and he was elected by the Legislature for a period of five years. A Rajpramukh of a Union of States was the ruler of one of the principal constituent States and was elected by

1. *Draft Constitution of India*, p. iv.

the Council of Rulers of the States forming that Union. The Rajpramukh was to be recognised by the President. The President also recognised the Sadar-i-Riyasat of Jammu and Kashmir, although it was just a formality. But the main feature that distinguished Part B States from Part A States was provision contained in Article 371 which vested in the Union Government the authority of exercising general control over the Governments of those States for a period of ten years from the commencement of the Constitution, or for such longer or shorter period as determined by Parliament. It was further provided that Part B States must comply with such particular directions as would be given to them from time to time by the President. And the directions were in practice so ubiquitous and frequent that the control exercised by the Union Government was characterised by many as "the new paramountcy." The State of Mysore was, however, exempted from such a control.[2]

Part C States which ranked lowest in the hierarchy were administered by the Union Government on a unitary basis. The Constitution clearly specified that the President would administer these States and in administering them he might act through a Lieutenant-Governor or a Chief Commissioner to be appointed by him, or through the Government of a neighboUring State.[3] The Constitution further provided that Parliament might create by law or continue by law local legislatures for these States and specify their functions.[4] Parliament was also authorised to create for each of such States a Council of Advisers or Ministers.[5] Parliament, accordingly, passed the Government of Part C States Act, 1951, providing for the setting up of the Legislatures and Ministries in Part C States. But this devolution of powers to Legislatures and Governments of Part C States did not detract the legislative authority of Parliament over those States or from the responsibility of the Union Government to Parliament for their administration. It was really unfederal to deem Part C States as the units of a federation.

Apart from the States of the Union, the Constitution also provided for the administration of the Territories in Part D and other Territories including the acquired territories but not specified therein. The only Territory specified in Part D was the Andaman and Nicobar Islands. A Territory, unlike a State, did not form a unit of the Union of India and as such it essentially differed from the States of the Union in matters of representation in the Union Parliament. Representation in the Council of States was only limited to the States[6] and a Territory being not a unit of the Union did not have representation there. The people of the State and the Union had representation in the House of the People by virtue of the Constitution, whereas representation of the people of a Territory depended upon legislation by Parliament.[7]

The Territory was administered by the President through a Chief Commissioner or other authority appointed by him, and by regulations which had the force of an Act of Parliament.[8] The legislative powers of Parliament also included matters in the State List.[9] The authority of the Union Government, administrative and legislative, including the regulation-making power, was, thus, complete in all respects.

But public opinion, both within and without the Part B and Part C States, had been constantly critical of this constitutional anomaly which, it was argued, offended the principle of equality of status between the constituent units of a federation. It also contradicted the principle of equal rights and opportunities for the People of India. The States Reorganisation Commission was "impressed by the weight of the public sentiment on this matter" and recommended that the existing constitutional disparity between the different units of the Union should disappear as a necessary consequence of reorganisation. "The only rational approach to the problem, in our opinion," observed the Commission, "will be that the Indian Union should have primary constituent units having equal status and a uniform relationship with the Centre, except where, for any strategic security or other compelling reasons, it is not practicable to integrate any small area with the territories of a full-fledged unit."[10] The Commission held that the classifi-

2. Proviso to original Article 371.
3. Original Article 239 (1)
4. Original Article 240 (1) (a).
5. Original Article 240 (1) (b).
6. Fourth Schedule, Article 80 (1) (b).
7. Article 81 (1) (b).
8. Article 243 (2), repealed by the Seventh Amendment Act, 1956.
9. Article 246 (4).
10. *Report of the States Reorganisation Commission*, para 237.

cation of States into three categories had been adopted essentially as a transitional expedient and was not intended to be a permanent feature of the constitutional structure of India. Part B States, the Commission recommended, should be equated with Part A States by omitting Article 371 of the Constitution and by abolishing the institution of the Rajpramukh. The institution of the Rajpramukh, observed the Commission, "has a political aspect" and large section of public opinion views its continuance with disfavour on the ground that it "ill accords with the essentially democratic framework of the country."[11]

With regard to Part C States, the Commission recommended that with the exception of Delhi, Manipur and Andaman and Nicobar Islands, which should be centrally administered, the remaining States in this category should to the extent practicable, be merged in the adjoining States.[12] Such of the States as could not be merged in the adjoining areas for security and other imperative considerations should be administered by the Centre as Territories.[13]

According to the States Reorganisation Commission the component units of the Indian Union were to consist of two categories :

(a) "States" forming primary federating units of the Union; and

(b) "Territories" centrally administered.

The Government of India announced on January 16, 1956 its acceptance of the recommendations of the State Reorganisation Commission for the abolition of the constitutional disparity of the different States such as Part A, B and C States, and the abolition of the institution of the Rajpramukh.

The New Political Map of India

As a result of reorganisation, the Union of India was to consist of 14 States and 6 Territories. States were : Andhra Pradesh, Assam, Bihar, Bombay, Kerala, Madhya Pradesh, Madras (Tamil Nadu), Mysore (Karnataka), Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal and Jammu and Kashmir. The six Territories were : Delhi, Himachal Pradesh, Manipur, Tripura, the Andman and Nicobar Islands, the Laccadive Miniocy and Amindivi Islands (Lakshadweep). No territorial change was made in the case of Assam, Uttar Pradesh and Jammu and Kashmir. Kerala was a new name, although it represented substantially the old States of Tranvancore-Cochin. The Kannada-speaking areas, which had been brought together, retained the name of Mysore. Andhra Pradesh was the combination of the States of Hyderabad and Andhra. The case for an enlarged Andhra State was forcefully stated by the Reorganisation Commission, though they favoured the formation of such States five years thence. The formation of the new Bombay State was based on a formula suggested by the Commission, though its territorial complex had to be altered to some extent by Parliament so as to consolidate in one State all the Marathi and Gujarati-speaking people, The exclusion of Himachal Pradesh and Tripura from the States of the Punjab and Assam respectively was decided after taking into consideration the wishes of the people and the immediate needs of those areas regarding their economic development.

The political map of India redrawn in 1956 had to be changed on May 1, 1960, when the State of Bombay was bifurcated into Maharashtra and Gujarat. The Union of India, then, consisted of 15 States and 6 Territories. It was again changed on August 1, 1960 when the Prime Minister announced in Parliament the decision of the Government for the creation of Nagaland as a new State—the 16th in the Republic. The Constitution (Thirteenth Amendment) Act, created the State of Nagaland, comprising the territory known as the Naga Hills, Tuensang Area and covering an area of about 6,000 square miles inhabited by 400,000 Nagas. Once again, the political map was changed by creating the seventeenth State of Haryana on November 1, 1966. Punjab was divided into Punjab and Haryana with portions of territory going to Himachal Pradesh, a Union Territory. Himachal Pradesh attained statehood in January 1971 and became the eighteenth State.

The Government of India announced on September 11, 1968 its decision to constitute an autonomous State–Meghalaya–within the State of Assam, consisting of the hill districts of Garo and Khasi and Jowai (Jaintia) in the first instance.[14] The autonomous districts of Mikir Hills

11. *Ibid.*, para 242.
12. *Ibid.*, para 268.
13. *Ibid.*, para 267.
14. Garo and Khasi Hills and the Jowai forming parts of the autonomous State of Meghalaya covered a population of 7.90,000.

and North Cachar Hills were given the option to join the autonomous State of Meghalaya through a two-third majority vote in their respective District Councils. Meghalaya, comprising the Garo and Khasi and Jowai (Jaintia) came into existence on April 2, 1970. As a result of the scheme to reorganize the north-eastern region of the country, Manipur and Tripura became States and Meghalaya was also elevated to the status of a full fledged State in December 1971.[15] Two new Union Territories of Mizoram and Arunachal Pradesh emerged out of the existing Mizo district and NEFA respectively. This made a total of twenty-one States comprising the Union of India. The thirty-Sixth Amendment created the Twenty-second State of Sikkim. Early in 1987, Arunachal, Mizoram and Goa were elevated and the total number of States constituting the Union of India came to twenty-five.

ZONAL COUNCILS

Two new features of the 1956 scheme of reorganisation, not relatable to the States Reorganisation Commission's Report were the formation of Zonal Councils and the setting up of Regional Committees of the Legislature in the Punjab and Andhra Pradesh. The Zonal Councils were intended to provide a forum for inter- State co-operation and an effort, in association with the Union Government, for the settlement of inter-State disputes and the formulation of inter-State development plans. The Regional Committees of the Legislature in Punjab and Andhra Pradesh were intendent to be set up with the object of catering to the special needs of the regions concerned within the framework of a unified State structure.

Zones and Zonal Councils

The States Reorganisation Act, 1956, divided the States and the Territories as reorgainsed (excluding the Andman and Nicobar Islands and the Laccadive, Miniocy and Amindivi Islands) into five Zones and established a permanent Zonal Council for each of them. The five Zones were:

(1) the Northern Zone comprising the States of Punjab, Rajasthan, Jammu and Kashmir; and the Union Territories of Delhi and Himachal Pradesh;
(2) the Central Zone, comprising the States of Uttar Pradesh and Madhya Pradesh;
(3) the Eastern Zone, comprising the States of Bihar, West Bengal, Orissa and Assam; and the Union Territories of Manipur and Tripura;
(4) the Western Zone, comprising States of Bombay and Mysore; and
(5) the Southern Zone, comprising the States of Andhra Pradesh, Madras; and Kerala with Mysore as a permanent invitee.

As a result of quite a number of reorganisations which have since then taken place the grouping of the States and Union Territories in different Zones at present is :

(1) The Northern zone consists of States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan; and the Union Territory of Chandigarh and Delhi;
(2) The Central zone comprises the States of Madhya Pradesh and Uttar Pradesh;
(3) The Eastern Zone comprises the States of Bihar, Orissa and West Bengal;
(4) The Western Zone consists of the States of Gujarat, Maharashtra , Goa and the Union Territory of Dadra and Nagar Haveli; and
(5) The Southern Zone comprises the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territory of Pondicherry.

For the North-Eastern region there is a body similar to the Zonal Council to deal with matters of common interest to the States of Assam, Arunachal Pradesh and Mizoram. The North-Eastern Council which came into being on August 8, 1972, has certain additional functions. It has to formulate a unified and co-ordinated regional plan (which is in addition to the State Plans) covering matters of common importance. In respect of projects or schemes intended to benefit two or more States, the Council has to recommend the manner in which they may be executed, managed or maintained, their benefit shared and the expenditure incurred. The progress of implementation of the Plan and the expenditure thereon are supervised by the Council. The Council has to review from time to time the measures taken by the States for maintenance of security and public order and, as and when necessary, recommend further measures in this be-

15. On November 10, 1970, the Prime Minister made a statement in Parliament announcing the Government's acceptance of Meghalaya's demand for full statehood. The decision to grant statehood to Manipur and Tripura, the Prime Miniter said, "necessitated a fresh look at the State of Meghalaya."

half.

Birth of the idea of Zonal Councils

The idea of Zonal Councils arose from the just and wholesome revulsions against the ugly passions disclosed by the reactions of linguistic communities in connection with the proposals of the States Reorginsation Commission. Before concluding his speech on the Commission's Report in the House of the People (Lok Sabha) on December 21, 1955, the Prime Minister commended to the House the idea of dividing India, after Reorganisation of States, into four or five areas and setting up an Advisory Zonal Council in each of them to "develop the habit of co-operative thinking." The Prime Minister made no secret of what he would do if left to himself. He said, "The more I have thought about it, the more I have been attracted to something which I used to reject previously and which I suppose, is not at all practicable now. That is, the division of India into four, five or six major groups regardless of language, but always I will repeat, giving the greatest importance to the languages in those areas. I do not want this to be a step to suppress language, but rather to give it encouragement. That, I fear, is a little difficult. We have gone too far in the contrary direction.But I would suggest for the consideration of this House a rather feeble imitation of that. That is, whatever final decisions Parliament arrives at in regard to these States, we may still have what I would call Zonal Councils, for four or five States, as the case may be, having a common council....." The Prime Minister indicated that the Zonal Councils would be advisory bodies. "Let us see how it develops," said Nehru."Let the Centre be associated with it for dealing with economic problems as well as the multitude of border problems and other problems that might arise."

The feeler thrown by the Prime Minister was received by the House with enthusiastic cheers, and approving nods from some prominent members of the Opposition were also witnessed. The result was that idea of the Zonal Council had quick maturity and found expression in the resolution of the Government of India published on January 16, 1956, containing decisions on most of the States Reorganisation Commission's proposals. It stated that "the Government of India propose, simultaneously with the creation of the new States, to establish Zonal Councils, which may deal with matters of common concern to the States in different Zones, including economic planning and questions arising out of reorganisation." Part III of the States Reorganisation Act provided for five Zones and the composition and functions of the Zonal Councils.

A Zonal Council was established for each of the Zones. While forming the division of these zones several factors, such as the natural divisions of the country, requirements of economic development, cultural and linguistic affinities, means of communication and requirements of security and law and order, were taken into account. The Northern Zone with its headquarters at New Delhi was inaugurated on April 24, 1957, the Central zone with its headquarters at Allahabad in May, 1957, the Eastern Zone with its headquarters at Calcutta on April 30, 1957, the Western Zone with its headquarters at Bombay on September 20, 1957, and the Southern Zone with its headquarters at Madras on July 11, 1957.

Composition of the Councils

The Zonal Council for each Zone consists of the following members :

(i) a Union Minister appointed by the President;

(ii) the Chief Minister of each such State to be nominated by the Governor;

(iii)where any Union Territory is included in the Zone, one member for each Territory to be nominated by the President.

The Zonal Council for each Zone has also a body of Advisers consisting of :

(a) one person nominated by the Planning Commission;

(b) Chief Secretaries in the States included in the Zone; and

(c) Development Commissioners in the States included in the zone.

The Advisers assist the Zonal Council in the performance of its duties. They also have the right to take part in the discussion of the Council or of any committee of the Council of which the adviser may be named a member. But no adviser has a right to vote at a meeting of the Council or of any such committee.

A Zonal Council may from time to time by resolution passed at a meeting appoint committees of its members and advisers for performing such functions as may be specified in the resolution. The Council may nominate and associate with any such committee such Union Ministers or Ministers in the States included in the Zone and officers of the Union Government or State Government as it may think appropriate. A per-

son associated with a committee of a Zonal Council has the right to take part in the discussions of the Committee, but without the right to vote. The Advisers of the Council, too, who are members of the committees, have no right to vote. A Committee so appointed shall observe such rules of procedure in regard to the transaction of business at its meetings as the Zonal Council may, with the approval of the Government of India lay down from time to time.

The Union Minister nominated by the President to a Zonal Council is its Chairman. The Chief Ministers of the States included in the Zone act as Vice-Chairmen of the Council for that Zone by rotation, each holding office for a period of one year at a time. Each Zonal Council has its own Secretariat consisting of a Secretary, a Joint Secretary and such other officers as the Chairman of the Council may consider necessary to appoint. The Chief Secretaries of the State represented in Zonal Council shall each be the Secretary of the Council by rotation and hold office for a period of one year at a time. The Joint Secretary is chosen from amongst officers not in the service of the States represented in the Council and is appointed by the Chairman of the Council. The Secretariat of each Council is located at such place within the Zone as the Council may determine.

Each Zonal Council meets when summoned by the Chairman. Unless otherwise determined by the Council itself, the Zonal Council for each Zone shall meet in the States included in that Zone by rotation. The Chairman presides at the meeting of the Council and in its absence the Vice-chairman. If both the Chairman and Vice-Chairman remain absent, any other members chosen by the members present, from among themselves shall preside at a meeting of the Council. The Chairman shall observe such rules of procedure in regard to the transition of business at its meeting as the Council may, with the approval of the Union Government, lay down from time to time.

All questions at a meeting of Zonal Council are decided by a majority of votes of the members present. In the case of equality of votes, the Chairman or, in his absence, any other person presiding has a casting vote. The proceedings of every meeting of a Council are forwarded to the Union Government and also to each State Government concerned.

Objectives of the Councils

The Councils are deliberative and advisory bodies competent to discuss matters of interest to some or all of the parties represented in them, namely, the Union, the States or the Union Territories. They may advise the Central Government and the Government of each State concerned as to the action taken or to be taken an any such matter. It has been provided that the Zonal Councils may in particular discuss and make recommendations regarding :

(a) any matter of common interest in the field of economic and social planning;
(b) any matter concerning border disputes, linguistic minorities, and inter-State transport; and
(c) any matter connected with or arising out of the Reorganisation of States.

Provision has also been made for the holding of joint meetings of two or more Zonal Councils.

When the Constitution of India was being framed, some statesmen expressed the view that India should adopt a unitary rather than a federal system of Government. They pointed out that federalism would encourage fissiparous tendencies, make economic planning difficult and prevent administrative uniformity. The framers of the Constitution preferred the federal to the unitary system as they thought that federalism alone could forge unity out of the wide cultural and social diversity in the country and prevent heavy concentration of power which was incompatible with democratic practice. They were, however, not oblivious of the cogency of the arguments of the opponents of federalism and provided for a federal polity with an exceptionally strong unitary bias.

Two factors during recent years led to the revival of the demand for a unitary form of Government–the bitter controversy and ugly incidents which followed the publication of the States Reorganisation commission Report[16] and

16. The fear of separatist forces anticipated in the linguistic provinces was reflected in the motion submitted by P.S. Deshmukh to the Steering Committee of the Constituent Assembly. Deshmukh recommended that for a variety of reasons, including the "bitter passions" aroused by the linguistic provinces controversy, the Draft Constitution should be forgotten and instead the Constituent Assembly should draw up a constitution providing India with a unitary government. Similarly, Maulana Abul Kalam Azad in a note on "Education in the Union and Concurrent List", dated May 19, 1948, pointed out that "'the demand for linguistic provinces and other particularistic tendencies" were gathering strength in the country, and the only way of maintaining Indian solidarity was "to give a commanding position to the Centre in the new constitutional set-up."

the realization that the presence of small States as constituent units of a federation stands in the way of the effective implementation of development plans. Switching on to the unitary system of government is really not the panacea for India's ills at this stage. But to bring about the "emotional integration of India," as Prime Minister Nehru fervently appealed in Parliament, is no doubt the desideratum and the scheme of Zonal Councils was an inspired idea. The Zonal Counsils are purely deliberative and advisory bodies intended to foster habits and institutions of economic cooperation and administrative coordination among the States within each Zone. The co-operation and coordination thus brought about is sure to contribute to the proper integration of the development programmes of the Zones by easing the rigidities and artificial barriers occasioned by the interference of State boundaries and they may in time prove to be valuable correctives, on the psychological and emotional plane, to the rivalries and separatist tendencies promoted by the more extreme types of linguistic claims. Referring to the Zonal Councils, Pandit Govind Ballabh Pant rightly remarked in Parliament "while the States have to be carved in accordance with their natural affinities, the supreme objective of strengthening the unity, the cohesion of the nation and the country, has to be given the first and foremost consideration....So far as the economic and developmental requirements of the country are concerned, these linguistic affinities do not mark the bounds of the various territories. Rivers do not determine their course in accordance with the language of the people who make them their homes. The mines that lie deep down in the bosom of the earth do not follow any regional pattern much less any linguistic pattern. So for the purpose of economic development at least, if not for anything else, it would be desirable to have councils of this type. Besides, they should serve to heal the wounds that separation may cause in some places." The scheme of Zonal Councils is the test in the art of living together. They are the flexible instruments to develop inter-State cooperation and the best example of co-operative federalism.

The main objectives of the Zonal Scheme can best be described in the words of Pandit Pant, which he outlined at the inaugural meeting of Northern Zonal Council:

"(1) to achieve an emotional integration of the country;

(2) to hope in arresting the growth of acute State conscience, regionalism, linguist and particularist trends;

(3) to help in removing the after-effects of separation in some cases so that the processes of reorganisation, integration and economic advancement may coalesce and synchronise;

(4) to enable the Centre and the states, which are dealing increasingly with matters economic and social, to cooperate and exchange ideas and experience in order that uniform policies for the common good of the community are evolved and the ideal of a socialist society is achieved;

(5) to co-operate with each other in the successful and speedy execution of major development projects; and

(6) to secure some kind of political equilibrium between different regions of the country."

While the scheme of the Zonal Councils was received generally with enthusiasm, apprehensions had also been expressed that it was too idealistic a venture and that it might result in a Zonal Council either absorbing the participating States, or Councils developing into powerful bodies which would weaken the Centre. But this is not a correct appraisal of the Zonal Councils. The Zonal Councils are deliberative bodies whose task is to advise the Union Government and the participating State Governments for action to be taken in matters of common interest. Their advisory functions are confined to securing better co-ordination within the different Zones, promotion of collective approach and effort to solve problems common to all the units within a Zone. They are intended to foster inter-state concord and thereby strengthen and invigorate the Union as well as the states. Pandit Pant clarified this point at the inaugural meeting of the Northern Zonal Council. He said, "The Councils, as I have already observed, are advisory bodies. But if they are to serve the purpose for which they have been constituted, their recommendation will need to be treated with consideration and respect. The success of the experiment will depend to a large extent on the outlook which the state Governments bring to bear on their deliberations, their ability to appreciate each other's point of view and their readiness to reconcile the state aspect of different problems with their inter-state aspect." The creation of the Zonal Councils does not, therefore, in any way detract from the content

of the legislative and executive powers of the states.

The idea of providing a meeting ground for inter-state co-operation in matters of common interest to states is by no means peculiar to India. In the United States of America, beginning with the inter-state Parole and Probation Compact of 1934, collective State action by means of compacts had been utilised to promote inter-state cooperation. Some agencies created to secure inter-state co-operation include a Legislative Reference Bureau, Inter-state Commissions, Conferences on current governmental problems, Conferences of state executives, administrators, and judges and regional associations. In Australia, in the same way, inter-state co-operation had taken various forms.

In India the Zonal Council idea dates back to the Coupland Plan, though it was a device suggested to give economic complexion to certain political plans. After independence, a Joint Advisory Council for Punjab, PEPSU, and Himachal Pradesh was set up and it continued to be in existence till the Northern Zonal Council came into being. In fact, it was the pioneer in initiating the Zonal idea. Another such example of regional co-operation was the Bhakra Control Board on which Punjab, PEPSU, Rajasthan and Himachal Pradesh were represented. The Zonal Councils are an inter-state forum where the states are associated with each other to promote and facilitate co-operative efforts towards the economic and social development of each Zone and, as a consequence of that, towards the unity and welfare of the nation. The unity and welfare of the whole country is the essence of the emotional integration of India. Pandit Pant epitomised the whole truth when he said that "no region could prosper unless the security and unity of India were completely ensured and generated for today, for tomorrow and for ever."

Generally, social and economic interests cut cross state lines and are of either regional or national concern. Greater co-ordination of social and economic policies and planned and orderly development of the resources of the country can be ensured if major policy decisions are not compartmentalised in the state-moulds. They must be fully studied and discussed with their impact on territories contiguous and the people inhabiting those areas who are to share the weal and woe resulting from such policy decisions. The then Madras Finance Minister C. Subramaniam, while inaugurating the quarterly meeting of the southern Indian Chamber of Commerce on November 12, 1958, pleaded for a Zonal approach while formulating the Third Five-Year Plan for the country. He suggested that instead of assessing the resources of each state separately and planning state-wise a combined and co-ordinated Zonal approach should be made to planning. This, he maintained, besides eliminating regional disparities would avoid lopsided development of a particular state.[17] Pandit Pant appealed to the Southern Zonal Council meeting to set the overall economy of the South, rather than of the individual states, as the guiding principle. Pandit Pant's appeal had an effect and the states of Andhra and Madras were knit into economic agreements, which hitherto had taken regional-political colour. Wider economic cooperation was envisaged in the proposal to set up a regional grid linking the power systems of Madras, Andhra, Mysore (now Karnataka) and Kerala. There are some who entertain serious doubts about the utility of the Zonal Councils in dealing with questions connected with, or arising out of the re-organisation of the states, such as, border disputes, linguistic minorities and inter-state transport. It is further contended that in such matters it is impossible for neighbours to come to an agreement by mutual discussion. The Governments of Andhra and Madras failed to settle even minor border disputes. Maharashtra and Mysore (Karnataka) waged their endless controversy. A proposal that Nehru should convene a conference of the Chief Ministers of Andhra, Maharashtra and Mysore (Karnataka) for a discussion of Krishna-Godavari waters dispute and then suggest his own solution was mooted, but without any tangible result.[18] In fact, even minor disputes about persons and places arouse more passion and create a deep sense of regional loyalties which had ever been the bane of Indian politics. On one occasion Nehru went so far as to suggest that if there was a choice between national unity and the Third Plan he would abandon the Plan rather than risk disunity.

The Congress President, Sanjiva Reddy, in his address to the Congress Session at Bhavnagar, suggested that the separatist tendencies could best be countered by arming the five Zonal Councils, which had so far served as advisory bodies, with the authority to "back up their solution and

17. *The Tribune*, Ambala Cantt., November 14, 1958.
18. *The Times of India*, New Delhi, March 21, 1963.

implement them." He maintained that "Decisions taken at Delhi may not take fully in account all the local needs.....Decisions at the State level may not reflect fully the needs of national importance. It is obvious therefore that a *via media* establishment is needed to decide the problem at an intermediary level."

The first and somewhat critical reaction to the Congress President's suggestion of giving statutory powers to the Zonal Councils came from the then Praja Socialist Party Chairman, Asoka Mehta. He expressed the view that though seemingly attractive, Sanjiva Reddy's proposal for stronger Zonal Council was not without dangers. The alternative solution that Mehta offered was to build a strong Centre with special powers to protect the rights of linguistic minorities. "The proper approach, in our opinion," he maintained, "is to strengthen the Centre. The Union Government should have wider concurrent powers and be given direct responsibility in certain matters, such as protecting the legitimate rights of linguistic minorities in the states. The Union Government should have the powers and the will to arbitrate in inter-state disputes quickly and firmly....."[19]

The Punjab delegates to the Bhavnagar Congress session supported the idea of a non-official resolution recommending the division of India into five Zones superseding the existing constituent states. Recently, a few more have spoken up and asked for a reversal of the policy of linguistic states. Virendra Patil, then Chief Minister of Mysore (Karnataka), suggested the formation of Zonal States; earlier, S. Nijalingapa, the Congress President, had spoken of the disintegrating impact of linguism on India's unity. V.V. Giri, as Vice-President of India, expressed the opinion that linguistic states must go. The Working Committee of the Jana Sangh, on April 4, 1969, demanded the constitution of a States Reorganisation Commission to examine in its entirety the question of redemarcation of state boundaries to reconcile the regional aspirations with the paramount need of national unity and security.

This is, no doubt, a gigantic task and it is doubtful now if the states will agree to the redistribution of their boundaries on basis other than language or abdicate any of their powers to the Zonal Councils, as was suggested by Sanjiva Reddy. In any case, the arming of the five Zonal Councils with wider powers is not likely to avert the main danger which India faces today. The threat of the disruptive forces at work, and which is much wider than ever before, can be countered only by creating a national consciousness that cuts across communal, casteist and linguistic divisions.

Whatever be the merits of Zonal Councils in creating them and the initial high hopes placed on them in bringing abut emotional integration of India, they are almost dormant now. President Giri, delivering the inaugural Govind Vallabh Pant memorial lecture, on April 10, 1972, regretted that Zonal Councils, instead of becoming "instruments of unity and great cohesion among states" have become "partially dormant."[20] He maintained that Govind Vallabh Pant had visualised the Councils as a means of bringing about greater understanding among the states and a common approach to problems and warned against letting discussion on Union-State relations and inter-state problems degenerate into conflicts between rival parties and competing ideologies. But the results had not been achieved and his labours seemed to be frustated. The President passionately pleaded that the progress of the people was not a divisible commodity. "A sense of partnership" he pointed out, "in the welfare of the people as a whole, and not a sense of partisanship, is the only constructive way of solving these differences and problems arising between the component units of the Union of India."

CENTRE-STATE RELATIONS

Legislative Relations

The essence of federalism is the division of the powers between the national Government and the state Governments. Within the spheres allotted to them, the National and state Governments are supreme and their authority is coordinate. Conflict of jurisdiction arising between the two sets of Government is decided by an independent judiciary, Federal or Supreme Court.

The scheme of distribution of powers is determined by the peculiar political conditions under which it comes into existence. In the United States when thirteen sovereign States agreed to federate, they were anxious not to permit their complete subordination to the Na-

19. *The Statesman*, New Delhi, January 9, 1963.
20. *The Times of India*, New Delhi, April 12, 1972.

tional Government. They would only agree to vest it with certain specified powers of common concern and national importance, retaining the rest for themselves. The Constitution of the United States, accordingly, contains only one list of subjects to be administered by the Central Government and the residuary powers remain with the States.[21] Through interpretation of the Constitution, under the leadership of Chief Justice John Marshall, not only a trend toward increased powers of the Central Government emerged, but also a field of concurrent legislation developed. On some matters such as bankruptcy, weights and measures, harbour regulations, both Congress and the state Legislatures may legislate, but state legislation shall take effect only in the absence of federal legislation.

But Canadian Constitution is just the other way. The Canadians had before them the experience of the working of the American Federal system extending to nearly about a century. They had also witnessed the American Civil War in 1861, and carefully watched the long and bitter controversy over rights of the states, which culminated in the tragic Civil War. It was natural, therefore, that they would have agreed to make the Centre strong and vest it with more powers. The North America (now Canada) Act, 1867, contained two Sections or Lists in which the powers of the Centre and the Units (Provinces) were enumerated, leaving the residuary powers to the Dominion Parliament. Besides, the Dominion Government was authorised by the opening para of Section 91 "to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the class of subjects by the Act assigned exclusively to the Legislatures of Provinces....." Section 93 of the Act gave the Provinces control over education subject to the intervention of the Dominion Government in some specific cases. Section 92 specified the exclusive powers of the Provinces. There was also a small Concurrent List comprising agriculture, and immigration and in case of conflict between the Dominion and Provincial laws, the Dominion Law prevailed. Old age pension was added to the Concurrent List in 1951, but the Dominion Law did not affect in any form the existing or any future Provincial Law. Australia broadly followed the American system, because the problem of federation there was different from that in Canada and much more like that of the United States. Political conditions prevailing there permitted its adoption. The Australian Constitution contains only one List enumerating the powers of the Federal Government and the powers of the States are residual.

The Government of India Act, 1935, contained three Lists—Federal, Provincial and Concurrent—and the residuary powers were given to the Governor-General in his discretion. The method of distribution of powers adopted was neither American nor Canadian. It was necessitated by the political conditions then prevailing in India. In the three Round Table Conferences preceding the enactment of the Act of 1935, there was a substantial difference of opinion between the Hindus and the Muslims with regard to the allocation of residuary powers. The Hindus, favouring a strong Centre, insisted that residuary powers should be given to it, whereas the Muslims favoured strong Provinces and demanded that residuary powers should go to them. To solve the conflicting claims, the device adopted was to enumerate exhaustively the exclusive powers of the Centre and the Provinces so as to reduce "the residue to proportions so negligible that the apprehensions which have been felt on one side or the other are without foundation."[22] The Joint Parliamentary Committee explained the need for having a Concurrent List. It said, "Experience has shown both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Centre or to a Provincial Legislature, and for which, though it is often desirable that Provincial Legislature should make provision, it is equally necessary that the Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial efforts, and in others, again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single province."

The scheme and principle of distribution of powers in the Constitution of India substantially remain the same as it was under the Government

21. The Tenth Amendment reads : the powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively." The prohibitions imposed on the National Government are stated in Article 1, Section 9, and first ten Amendments, and the restrictions imposed on the State Governments are enumerated in Article 1, Section 10.

22. *Joint Parliamentary Committee*, Reports para 49.

of India Act, 1935. There are three Lists : the Union List, the State List and the Concurrent List. Parliament has the exclusive power of making laws with respect to matters which are enumerated in the Union List which contains 97 subjects. The State Legislatures have the exclusive powers of making laws with respect to matters enumerated in the State List containing 66 subjects. As regards matters which are enumerated in the Concurrent List, 47 in number, both Parliament and state Legislatures have concurrent powers with the proviso that in case of a conflict, the Central Law must to the extent of repugnancy, prevail over the state Law. If, however, the state Law has been reserved for, and received the President's assent, it will prevail over the Central Law unless and until Parliament passes a new law overruling the provisions of the state Law.

The Constitution (Forty-second Amendment) Act, 1976, inserted four new Entries—17-A, 17-B, 20-A, and 33-A and substituted Entry 25 with new matters in the Concurrent List. Entries 17-A and 17-B include Forests and protection of wild animals and birds. Entry 20-A relates to population control and family planning and Entry 33-A deals with weights and measures except establishment of standards. Administration of justice, constitution and organisation of all courts, except the Supreme Court and the High Courts have been inserted in entry 11-A. Entry 25 substitutes education including technical education, medical education and Universities, subject to the provision of entries 63, 64, 65 and 66 of List I; vocational training and technical training of labour. Most of these entries were originally on List II–State List.'

The residuary power, the Constitution gives to Parliament. This is unlike the Government of India Act, 1935, which vested residuary power in the Governor-General who could in his discretion assign to the Centre or the Provinces legislative powers regarding subjects not mentioned in any of the three Lists.

The enumeration of subjects in the three Lists is extremely detailed and an attempt has been made to exhaust all the activities of ordinary government.

While the Constitution confers exclusive jurisdiction upon the State Legislatures to make laws with respect to matters enumerated in the State List Articles 249-253 provide for certain cases in which Parliament is empowered to legislate with respect to any matter in the State List whenever the Council of States passes a resolution supported by a two-thirds majority of the members present and voting that such legislation by Parliament is necessary or expedient in the national interest. Laws so made by Parliament remain in force for a period not exceeding one year unless continued under a fresh resolution for a further period of one year. It shall, to the extent of incompetence, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force.

The Government resolution invoking Article 249 of the Constitution, the first of its kind, empowering Parliament to legislate on certain matters to deal with terrorism along the border areas was passed on August 13, 1986. The resolution was passed with an official amendment to incorporate a preamble setting the government's intention to limit Parliamentary legislation to the country's north-western border. The preamble read: Whereas the situation in Punjab and other areas in the north-west borders of India has become extremely grave due to infiltration from across the north-western borders and unabated terrorist activities in the border areas."

The Punjab Cabinet endorsed Punjab Chief Minister Surjit Singh Barnala's criticism of the government's resolution under Article 249 passed by the Rajya Sabha empowering Parliament to legislate for certain matters included in the State List. The Punjab Chief Minister had the grievance that at no stage was he consulted about the invocation of Article 249. But the resolution never became operative and was allowed to lapse on August 12, 1987. The Statutory resolution empowered Parliament to make laws with respect to specified matter for a period of one year "from 12th August, 1986."

The division of powers in the American Constitution is rigid and no change can be made therein without amending the Constitution. In Australia, too, amendment of the Constitution is required for transferring to the Commonwealth Parliament any of the powers substantially given to the state by the Constitution. In Canada the Dominion Parliament is competent to make laws on matters provincial or local when they assume national importance. But it has no power to legislate on a matter which comes directly within the exclusive Provincial List. Whenever any matter assumes national importance, the Union Parliament can legislate for "the peace, order and good Government of Canada" and it is for the courts, and not Parliament, to determine whether

necessity for such assumption of powers by Parliament exists or not. In India, on the other hand, when the Council of States determines that a subject has assumed national importance and passes a resolution to that effect with the requisite majority, Parliament becomes competent to invade the State List to the extent that the resolution goes. The House of the People has no say in the matter and it is the exclusive concern of the Council of States. The power of Parliament in this respect is, no doubt, temporary, yet it is indicative of the tendency of the Constitution towards unitariness. No other federal constitution makes a similar provision as it is not in conformity with the federal principle.

The Indian Constitution reserves for the Union the power to invest itself with overriding authority in emergencies. Article 250 empowers Parliament to legislate with respect to any matter in the State List during the operation of Proclamation of Emergency. A Proclamation of Emergency may be issued if the President is satisfied that the security of India or any part thereof is threatened either by war or external aggression or armed rebellion or even if the threat of either of these exists. It is for Parliament, and not for courts, to determine the expediency of a Proclamation of Emergency and once Proclamation of Emergency comes into operation, the Constitution, for the period of Emergency becomes in effect unitary and Parliament can legislate on any matter in all the three Lists. The Executive authority of the Union being coordinate with its legislative authority, during the operation of Emergency, the Union Government has the power to give directions to the State Governments how they should exercise their Executive authority.

The Constitution also provides for emergency powers to deal with a breakdown of the Constitution in a State. If the President is satisfied, on the report of a Governor or otherwise, that the Government of a State cannot be carried on in accordance with the Constitution, or where any State had failed to comply with the directions of the Union Government, the President may hold that a situation has arisen in which the Government of the State cannot carried on in accordance with the provisions of the Constitution and issue a Proclamation transferring the legislative powers of the State to Parliament.

The exclusiveness of the State List is further modified by Article 252 which empowers Parliament to legislate on any subject in the State List, if the Legislatures of two or more States resolve to make a request to Parliament to that effect. The laws so made by Parliament can also apply to other States which may adopt them after making their request in the same manner. Once Parliament is empowered to legislate at the request of the State Legislatures, the jurisdiction of the latter is excluded from those matters.

Entry number 14 of the Union List confers on Parliament exclusive power to make laws with respect to "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries." Article 253 empowers Paliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Thus, in order to implement any treaty or agreement with a foreign country, Parliament's power of legislation is not confined to matters on the Union List and the Concurrent List. It can pass an Act dealing with a matter on the State List if the implementation of any kind of international treaty or agreement so necessitates it. And the law so passed by Parliament shall not be invalidated on the ground that it contains some provisions relating to matters on the State List. This is really sweeping power and it has no parallel even in Canada. In *Attorney-General of Canada* vs. *Attorney-General of Ontario* the Privy Council held that "in a federal State where legislative authority is limited by a constitutional document or is divided up between different legislatures in accordance with the classes of subject-matter submitted for legislation.....the obligation imposed by treaty may have to be performed, if at all, by several legislatures; and the executive have the task of obtaining the legislative assent not of the Parliament to whom they may be responsible but possibly of several parliaments to whom they stand in no direct relation. The question is not how the obligation is formed, that is the function of the executive but how is the obligation to be performed and that depends upon the authority of the competent legislature or legislatures."

ADMINISTRATIVE RELATIONS

Union and States and States *inter se*

Co-operation and goodwill are the two essential prerequisites which minimise friction inherent in a dual system of government and ensure

smooth and proper functioning of the administrative machinery. But there are always in every federal scheme of government certain forces, seen or unseen, at work which if unchecked by law encourage disruptive tendencies and jeopardise the solidarity of the State. Provision has also to be made for meeting emergencies which either may emerge from the actual working of the federal scheme or to meet the new conditions and circumstances which may result from differences arising between the independent functioning of authority in the two sets of Government. Finally, the National Government is responsible for the peace, order, good government and security of the country as a whole. All these factors necessitate cooperation in the administrative sphere of the Centre and the States. In fact the success and strength of the federal polity depend upon the maximum of co-operation and co-ordination between each set of authorities and between States *inter se*.

Administrative relations between the Union and the States of a federation may be examined under two headings : (1) techniques of Union control over States; and (2) inter-State comity.

Union Control over the States

During Emergency the control of the Union Government over the States in India is complete in all respects, and the Constitution will work as if it were a unitary government. During normal times the Union government exercises control over the States through different methods and agencies. This may be examined under the following heads : (i) directions to the State Governments, (ii) delegation of functions, and (iii) All-India services.

(i) *Directions to the State governments*

The idea of the Union Government giving directions to the State Governments is foreign and repugnant to the Constitution of the United States. The Framers of the Indian Constitution borrowed it from the Government of India Act, 1935. The Constitution, accordingly, gives the Union Government the power to give directions to the State Governments.

(a) A constitutional obligation is placed on the State Governments : (1) to ensure compliance with the laws made by Parliament, and (2) not to impede or prejudice the exercise of the executive power of the Union within their respective territories. In either case the Union Government may give for the purpose such directions to a State as may appear to it to be necessary and expedient. When both these provisions are put together they unprecedentedly widen the authority of the Union Government, for they restrict, both positively and negatively, the executive authority of State and give ample scope to the Union Government for exercising its executive functions unrestricted in any way. The sanction behind the directions of the Government of India is the provision of Article 365 which says : "Where any State has failed to comply with, or to 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 President to hold that a situation has arisen in which the government of the state can not be carried on in accordance with the provisions of this Constitution." It means that if a State has failed to comply with the directions of the Union, the President may declare under Article 356, that there has taken place a breakdown of the Constitution in the state and he may assume to himself all or any of the functions of the Government of the State.

But Kerala Government refused to comply with the provisions of the Essential Services Maintenance Ordinance 1968, and regretted its inability to issue instructions to district authorities to take suitable action, including arrest of and Institution of cases, against persons instigating employees who were willing to work. The attention of the Kerala Government was invited to Article 256 of the Constitution which provided that 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 appear to the Government of India to be necessaary for that purpose." The State Government informed the Government of India that all actions necessary and found suitable were being taken, keeping in view the provisions of Article 256. Clarifying the position taken by the Kerala Government, the Chief Minister, E.M.S. Namboodiripad, said that his Government had only used its discretion in the application of the Ordinance in regard to arrest and prosecution of those inciting or taking part in the September 19, 1968 token strike. The attitude of the State government left no option for the Government of India but to post Central Reserve Police without previously intimating the State Government.

The Kerala Government protested to the

Union Government against posting of Central Government Police without their consent and characterized it as an invasion on the autonomy of the State. The United Front Government of West Bengal also challenged the right of the Union Government to deploy Central Reserve Police in the State, especially after the Cossipur Gun and Shell factory firing incident. The Constitution (Forty-second Amendment) Act, 1976, inserted Article 257-A empowering the Government of India to deploy any armed force of the Union or any other force subject to the Union for dealing with any grave situation of law and order in any State. The armed force so deployed was to act in accordance with the directions as the Government of India might issue and it was to be in no way subject to the superintendence and control of the State Government unless otherwise provided in such directions. As a measure of abundant caution Entry 2-A was inserted in List I—Union List—which dealt with the deployment of any armed force of the Union or any other force subject to the control of the Union in any State in aid of the civil power. The Constitution (Forty-fourth Amendment) Act, 1978, omitted Article 257-A, [23] but Entry 2-A in List I of the Seventh Schedule was retained. When the Forty-fourth Amendment Bill was being discussed in Parliament, the Prime Minister and the Home Minister gave a categorical assurance that deployment of any armed force of the Union would be subject to the request made by the State Government. But Giani Zail Singh, then Home Minister in the Congress (I) Government, made a public statement that in the event of communal riots and atrocities on Harijans the Union Government would be competent to deploy armed forces of the Union without waiting for the request coming from the State Government.

(b) The Union Government may give directions to a State as to the (1) construction and maintenance of means of communication declared to be of the national and military importance, and (2) measures to be taken for the protection of railways within the States, provided that in either case compensation shall be paid to the States in respect of the extra cost incurred for the purpose.

Communications generally, are a State subject, vide Entry 13, List II—State List. Article 257 (2) empowers the Union Government to give directions to a State to construct and maintain means of communication which the former may declare to be of national or military importance. It means, that while the Government of India may itself construct and maintain means of communication necessary for the exercise of its powers over naval, military and air force works [Entry 4, List I–Union List—and proviso to Article 257 (2)], it may also direct the States to construct and maintain such means of communication which may be important from the national or military stand point.

Similarly, railways are a Union subject and Police, including Railway Police, is a State subject. The executive power of the Union to give directions to a State for the protection of the railways includes the power of the Government of India to give directions to a State Government to employ its police force for the proper protection of the railways and their property and, if necessary, to employ additional police subject to contribution by the Union as provided in Article 247 (4).

(ii) *Delegation of Functions*

Article 258 provides that the President may with the consent of the Government of a State entrust either conditionally or unconditionally to that Government or its officers functions in realtion to any matter to which the executive power of the Union extends. Parliament may also by law entrust functions to a State Government or its officers in relation to any matter over which the State Legislature has no jurisdiction. In such a case there shall be paid to the State compensation for the extra cost of administration incurred by the State in connection with the exercise of those powers and duties.

According to Article 258–A, inserted by the Constitution (Seventh amendment) Act, 1956, the Governor of a State may with the consent of the Government of India entrust, either conditionally or unconditionally, to that Government or its officers functions in relation to any matter to which the executive power of the State extends. The Constitution, thus, provides for inter-level delegation of functions.

Mention may also be made that Article 355 imposes a duty on the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

(iii) *All-India Services*

23. The Constitution (Forty-fourth Amendment) Act, 1978, S. 33.

As under a dual polity there are two sets of government, it follows that there shall be two separate public services, one for the States and the other for the Union to administer their respective laws. The Constitution of India provides for separate public services to administer their respective affairs. But the Constitution also provides that the Indian Administrative Service and the Indian Police Service are common services to the Union and the States. Parliament is further empowered, under Article 312, to create more of such All-India Services whenever it is expedient in the national interest to create them.[24] This is an extraordinary feature of the Indian Constitution. Ambedkar said : "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 one 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.....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..... 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 common qualifications, with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the Union."[25]

The service conditions of All-India Service are regulated by Central Rules and Regulations, and their ultimate responsibility lies to the Government of India.[26] But they hold key posts in both the Central and State Governments and, thus, help to ensure integration of administration throughout the Union of India. It is, accordingly, a device to exercise certain control over the State Government so that they do not "run in flat contradiction to the spirit of the constitution or the important national policies."[27]

Inter-State Comity

Though the federating units are autonomous within their own territorial limits, no unit can lead an unconnected and isolated life from the rest. In fact, the very exercise of its autonomy requires recognition of certain principles of mutual co-operation. All federal constitutions, accordingly, lay down certain rules of comity which the units must observe in their relations to one another. The Constitution of India empowers Parliament to provide for the adjudication of any dispute or complaint with respect to the use, distribution, or control of the waters of, or in, any inter-State river or river valley. Parliament may by law also provide that neither the Supreme Court nor any other court shall exercise any jurisdiction in respect of any such dispute or complaint.[28] Provision has also been made for the creation of an Inter-State Council.[29] If at any time it appears to the President that public interests would be served by establishing an Inter-State Council charged with the duty of (a) inquiry into and advising upon disputes which may have arisen between States; (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President, to establish such a Council and define its duties, its organisation and the procedure to be followed.

Article 261 provides 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. But Parliament lays down by law the mode of proof and the effects of such acts and proceedings in other States. It is further provided that final judgments or orders delivered or passed by civil courts in any part of India are executable anywhere within India according to law.

The Constitution prescribes that trade, commerce and inter-course throughout the territory of the Union shall be free.[30] But like all other freedoms, the freedom of trade, commerce and intercourse is also not absolute. Parliament is empowered to impose restrictions on the freedom

24. For instance, All India Health, Economic and Statistical, and Forest Services.
25. *Constituent Assembly Debates*, Vol. VII, pp. 41-2.
26. The Chief Secretary and the Inspector-General of Police, Assam Government refused to carry out certain instructions of the State Government during the linguistic riots in that State in 1961. They were of the opinion that the instructions were in violation of the Constitution and national policies.
27. Amal Ray, *Inter-Government Relations*, pp. 10-31.
28. Article 262.
29. Article 263.
30. Article 301.

of trade, commerce or intercourse between one State and another in any part of the territory of India that it may deem necessary in public interest.[31] Article 303 prohibits Parliament and State Legislatures from enacting legislation giving preference to one State over another or making discrimination between one State and another by virtue of any Entry relating to trade and commerce in any of the List in the Seventh Schedule. But Clause (2) of the same Article also authorises Parliament to make any law giving preference to one State over the other or making discrimination between States if it is declared by such law that it is necessary to do so to meet a situation arising from the scarcity of goods. It may be noted that while this Article empowers Parliament to give preference or make discrimination, provided it is necessary for the purpose of dealing with a situation from the scarcity of goods in any part of the territory of India there is no exception in the case of a State Legislature on the ground of scarcity of goods. There is a definite and specific prohibition upon State Legislatures against preference and discrimination.

But a State Legislature has the power to impose by law non-discriminatory taxes on goods imported from other States and Union Territories provided goods manufactured or produced in that State are subjected to such taxes. It may also impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in public interest. No Bill or amendment for this purpose, however, can be introduced or moved in the State Legislature without the previous sanction of the President.[32] These provisions are analogous to the American doctrine of "police powers" of the States to impose restrictions on inter-State commerce. But this power of the States in America is authorised by courts and, therefore, it emanates form the judicial doctrine. In India, on the other hand, it carries the constitutional sanction. Moreover, the provisions of the Indian Constitution are much wider in scope than the application of the doctrine of "police power" in the United States.

Article 307 empowers Parliament to establish such authority as it considers appropriate for enforcing the provisions of the Constitution with regard to inter-State trade and commerce and imposes on it such duties as it thinks fit. Such an authority in India, when established, will be similar to the Inter-State Commerce Commission of the U.S.A.

FINANCIAL RELATIONS

Fiscal Autonomy of the Units

The system of federal finance essentially differs from the one obtainable under a unitary system of government. The essence of federalism is the distribution of functions, but the distribution of functions must be accompanied by the distribution of resources if those functions are to be adequately and efficiently performed. The first requisite of a federal finance is that the national government and the governments of the units constituting the federation must have under their independent control financial resources adequate to perform functions assigned to their executive jurisdiction. Each government should command the fullest possible freedom of initiating and operation, in tapping its resources and meeting its expenditure. Financial aauthority like political authority, under a federal scheme of government, must be fully decentralized, as financial independence is a large part of general independence. Without fiscal autonomy of the units there can be no political autonomy for them. The proper relation between the National Government and Governments of the States should only be that of co-ordination and control. Professor Adarkar, dealing with this complex problem of federal finance, says : "Freedom of operation must be extended to both the federal and State Government in order that they do not suffer from a feeling of cramp in the discharge of their normal activities and in the achievements of their legitimate aspirations for the promotion of their social and economic achievements."[33]

But no federation has observed a rigid application of this principle. It has been so modified as to meet the particular economic and financial needs of the country concerned. Recent developments in the theory of federalism, too, have necessitated modification in its application. The basis of distribution of financial resources, accordingly, differs from federation to federation. In the United States, Congress has the power to levy and collect taxes, duties, imposts, and excises to pay the debts and provide for the common

31. Article 302.
32. Article 304.
33. Adarkar, B.P., *The Principles and Problems of Federal Finance*, p. 219.

defence and general welfare of the United States and to borrow money on the credit of the United States. In Canada, the Union Parliament has the power to raise money by any mode or system of taxation and to borrow money on public credit. In Australia, the Centre and the States have concurrent powers of taxation except that the imposition of custom and excise belong exclusively to the Commonwealth.

In India the Drafting Committee had recommended that in view of the unstable conditions prevailing in 1948, the existing distribution of the sources of revenue under the Government of India Act, 1935, should continue for at least five years after which a Finance Commission be appointed to review the position. The Constitution made a provision for the appointment within two years of the inauguration of the Republic, or thereafter at the expiration of every fifth year or earlier, a Finance commission consisting of a Chairman and four other members.[34] The duties of the Commission are to recommend to the President the distribution of the taxes which are distributable between the Centre and the States and the principles on which grants-in-aid should be made out of the Union revenues to the States, and make recommendations or any other matter referred to in the interest of sound finance.[35] The Constitution thus provides for a new solution to the problem of distributing the public revenues. It is a flexible method and the whole division comes under review after every fifth year and even earlier.

Allocation of Revenues

The taxes on the Legislative Lists remain much the same as under the 1935 Act. The States are absolutely entitled to the proceeds of taxes on the State List and the Union takes the proceeds of taxes on the Union List and of any tax not mentioned in any List. There are no taxes on the Concurrent List. While the proceeds on the taxes within the State List are entirely retained by the States, the proceeds of some of the taxes in the Union List are to be assigned, or may be assigned wholly or partly to the States. The residuary taxing authority rests with the Union. The Constitution distinguishes four categories of Union taxes which are available, wholly or in part, to the States.

(i) Duties levied by the Union but collected and wholly appropriated by the States : Stamps duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance, transfer of shares, debentures, proxies and receipts, and excise duties on medicines and toilet preparations containing alcohol.

(ii) Taxes levied and collected by the Union but whose net proceeds are wholly assigned to the States include :

(a) duties in respect of succession to property to other than agricultural land;
(b) state duty in respect of property other than agricultural land;
(c) terminal taxes on goods and passengers carried by railway, sea or air;
(d) taxes on railway fares and freights;
(e) taxes other than stamp duties on transactions in stock-exchanges and future markets;
(f) taxes on the sale or purchase of newspapers and on advertisement published therein; and
(g) taxes on the sale and purchase of goods in the course of inter-State commerce and trade.

(iii) Taxes levied and collected by the Union but whose net proceeds are shared between the Union and the States. The only tax which comes under this category is the Income Tax. The Corporation Tax is not shared, but belongs exclusively to the Union. Agricultural Income Tax is a State subject and, therefore, does not come under this category. After deduction of sums attributable to the Union Territories and to Union emoluments, the net proceeds of Income Tax are divided between the Union and the States and among different States as prescribed by the orders of the President after considering the Report of the Finance Commission.

Parliament may, for Union purpose, impose surcharges on those duties or taxes which are available for distribution, but it may not alter the rates of taxes in which States are interested except on the recommendation of the President..

(iv) Taxes which are levied and collected by the Union but whose net proceeds are shared between the Union and the States. Under this category come Union excise duties other than those on medicinal and toilet preparations. The excise duties on medicinal and toilet preparations are wholly, as said in item (i) assigned to the

34. Article 280 (1).
35. Article 280 (3).

States.

Grants-in-Aid

The Constitution provides for three kinds of grants to the States from the Union resources. Under Article 273 the States of Assam, Bihar, Orissa and West Bengal are given grants in lieu of export duty on jute and jute products. The sums of such grants-in-aid may be such as prescribed by the President. These sums are to be paid to the States so long as the export duty on jute and jute products continues to be levied by the Government of India or until the expiration of ten years since the inauguration of the Republic, whichever is earlier.

There is general provision of grants to the States in Article 275. Parliament is empowered to make such grants as it may deem necessary to give financial assistance to any State which is in need of Assistance. It is for Parliament to determine the extent of the grant and it may vary according to the needs of the different States. Apart from this, it is the constitutional duty of the Union to finance schemes it has approved for the welfare of the Scheduled Tribes and for raising the level of administration of the Scheduled Areas. There is special provision for a grant to Assam and to any other autonomous State formed within the State of Assam under Article 244A, in respect of their tribal areas.

Under Article 282 the Union and the State Governments are given power to make grants for any public purpose even if it is not within their respective legislative competence. Financial assistance or the grants-in-aid are prolific source of Central control and direction. They are made subject to conditions and are followed by regulatory authority of the Union Government. It is a matter of common experience that one who pays the piper has a loud voice in calling the tune.

Exemption from Taxation

The Constitution also follows the general provisions of the Government of India Act, 1935, and exempts the property of one Government from taxation by another. Article 285 provides that unless Parliament declares otherwise, Union property is not subject to State taxation, but shall continue to pay existing dues to local authorities until Parliament stops it. A State may not tax electricity supplied to the Government of India or a railway unless permitted to do so by Parliament. Without the consent of the President, a State may not tax water or electricity supplied or controlled by any authority established for regulating or developing any inter-State-river or river-valley.

The property and income of a State are exempt from Union taxation, but this exemption does not extend to a trade or business carried on by the Government of a State, unless Parliament declares by law such trade or business incidental to the ordinary functions of Government.

Power of Borrowing

Generally the power of borrowing is only incidental to the power of the Government and no specific provision is made in a Constitution as regards the limits and modes of borrowing, but the Constitution of India makes a specific provision in this respect. The Union Government is empowered to borrow upon the security of the Consolidated Fund of India, subject to the limits and conditions as Parliament may impose.[36] Thus, the power of borrowing of the Union is subject to the limits as prescribed by an Act of Parliament. But the Constitution itself imposes limitations on the borrowing powers of the States in addition to conditions which the State Legislature may impose. A State can borrow only within India and cannot raise a new loan without the consent of the Union Government if there is outstanding any part of a previous loan guaranteed by the Union or owed to it, The Union Government may make loans to States subject to the conditions imposed by Parliament, or may guarantee loans to States, provided that the limits set by Parliament to Union loans are not exceeded.

Financial Emergency Powers

The Financial Emergency powers, as provided in Article 360 have as far reaching effects as those relating to legislative and administrative spheres. A Proclamation of Financial Emergency may leave the States with no other resources than those available from taxes on the State List, for the President may, while the Proclamation is in operation, suspend any of the provisions of the Constitution relating to grants and to the sharing of Union Taxes. If the President is satisfied that the financial stability of India or any part thereof is threatened, he may issue a Proclamation empowering the Union to give directions controlling a State's financial activities and require State Money Bills to be reserved for consideration by the President.

36. Article 292.

Comptroller and Auditor-General

The Comptroller and Auditor-General of India is appointed by the President and he performs such duties and exercises such powers in relation to the accounts of the Union and the States and of any other authority or body as Parliament may prescribe by law. The accounts of the Union and of the States are to be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India prescribe.

CENTRE AND STATES

Centre-State Relations

The relationship between the Centre and the States covers a wide range and embraces a very large part of the functions and activities in the administrative, social and economic spheres. Since 1950, many events have occurred which have a direct or indirect bearing on the Centre-State relations. For instance, the Planning Commission was set up by a resolution of the Government of India in March 1950 with the object of accelerating the economic growth of the country and to meet the social urge for the extension of social services. Though not a creation of the Constitution not even endowed with a statutory sanction, the Planning Commission assumed the role of the architect of India's destiny. There were widespread complaints and it was contended that Five-Year Plans had reduced the federal structure to almost a unitary system. Presenting the Budget to the Tamil Nadu Legislature, on June 17, 1967, C. N. Annadurai observed, "There has been a considerable change in the matrix of Centre-State financial relations since the provisions of the Constitution in this regard were settled. There have been a number of new trends and developments which could not have been visualised when the Indian Constitution was framed..... Through a new institution which was beyond the ken of the architects of the Constitution, the Centre has acquired still larger powers, causing concern about the position of the States." The reorganization of the States in 1956 and thereafter, especially with the emergence of non-Congress Governments in some States after the 1967 General Election and split in the Congress in 1969 gave to the issue of Centre-State relations a new dimension and importance.

Investigation by Administrative Reforms Commission

The Centre-State relations became the subject of investigation by the Administrative Reforms Commission in the mid-sixties. In order to probe thoroughly the various aspects of the issues involved in this relationship, the Commission first appointed a study team headed by M.C. Setalvad. On the basis of the report of this study team, the Administrative Reforms Commission submitted its own report on June 19, 1969 to the Government. Referring to the controversies which had arisen between the Centre and the States, the Commission observed : "but these controversies pertained mostly to matters administrative and financial and not to constitutional issues. Eminent leaders of various political parties who appeared before the Commission emphasised their faith in the Indian unity though they argued for more autonomy and initiative for the States." The Commission, therefore, did not think it necessary to suggest any amendments to the Constitution. They, however, recommended for delegation of more financial and administrative functions and powers to the States "with the twin objective of making the relations between the Centre and the States more smoother and introducing efficiency and economy in the administration of the Union and State Governments." It is not in the amendment of the Constitution, the Commission asserted, "that the solution of the problems of the Centre-State relationship is to be sought, but in the working of the provisions of the Constitution by all concerned in the balanced spirit in which the founding-fathers intended them to be worked."

Rajamannar Committee

On September 22, 1969 the Tamil Nadu Government constituted a committee consisting of Dr. P.V. Rajamannar, Dr. Lakshmanswami Mudaliar and P.C. Chandra Reddy to examine the entire question regarding the relationship that should subsist between the Centre and the States in a federal set-up and to suggest suitable amendments to the Constitution so as to secure utmost autonomy to the States. The Committee presented its report to the Tamil Nadu Government in May 1971. The pith of the report is to alter the theme of subordination of the State "running right through the Constitution." The Committee felt that the prevailing unitary trends are mainly due to the certain provisions in the Constitution which confer special powers on the Centre; one-party rule, both, at the Centre and in the States; inadequacy of States' open fiscal resources and consequent dependence on the Cen-

tre for financial assistance; the institution of Central planning and the role of the Planning Commission. "In a federation", the Committee observed "The national and State Governments exist on a basis of equality and neither has the power to make inroads on the definite authority and functions of the other unilaterally. In India, however, the national Government is vested with powers on certain occasions to invade the legislative and executive domain of the States."

The Rajamannar Committee recommended among other things quite a number of constitutional amendments. Its recommendations, the Committee asserted, enlarge the autonomy of the State consistent with the integrity of the country. The Committee disclaimed any intention to disturb the essential framework of the Constitution. "Our aim was not to destroy the present Constitution and frame another in its stead, our intention was not to 'grasp this sorry scheme of things' and to 'shatter it to bits' and then remould it nearer to the heart's desire."

The Committee came down strongly on Article 365 which entitled the Centre to supersede a State Government, by assuming to itself under Article 356, the powers of the State Government concerned and recommended the repeal of this Article along with others tending to usurp or constrict powers of the States. At the same time, the Committee recommended that the Governor should be appointed always in consultation with the State Cabinet, or alternatively in consultation with a high power body specially constituted for the purpose. The Governor should be ineligible for a second term in office and he should be liable to removal only for proved misbehavior or incapacity after inquiry by the Supreme Court. It also recommended that there should be a constitutional provision enabling the President to issue instrument of instructions to the Governor laying down guidelines in respect of matters on which the Governor should consult the Centre or those on which the Centre could issue directions to him. The instrument should also lay down principles for the Governor to act as Head of the State, including the occasions for the exercise of discretionary powers. The provisions in the Constitution that the Ministry holds office during the Governor's pleasure should be omitted.

Regarding emergency provisions in the Constitution, especially emergency confined to a State (Articles 356 and 357) the Committee recommended the provisions to be totally omitted. Alternatively, sufficient safeguards should be provided in the Constitution to secure the interests of a State against the arbitrary and unilateral action of the party in the power at the Centre. If the provisions, as now obtaining in the Constitution, were to remain, the only contingency which might justify the imposition of President's rule was the complete breakdown of law and order in a State, when the State Government itself was unable or unwilling to maintain the safety and security of the people and property in the State. Also, the President, before issuing a Proclamation of superseding the State Government, should refer the report of the Governor to the State Legislative Assembly for its views.

The Committee suggested the setting up of an Inter-State Council consisting of the Prime Minister and the Chief Ministers to decide on matters of interest to more than one State and all matters of national importance, except defence and foreign affairs. The Committee insisted that the decisions of the Council should ordinarily be binding on the Centre and the States. If the Central Government were to disagree, the reasons for such disagreement with the decisions of the Council should be explained to Parliament and the Legislatures of the States. The Committee also recommended regional representation on the Union Cabinet and equal representation of all States in the Council of States (Rajya Sabha). In the House of the People (Lok Sabha) the number of seats fixed for each State in 1951 should remain unaltered, except where there was increase in population.

The Committee also made several recommendations about the distribution of powers between the Centre and the States. It suggested the appointment of a "High Power Commission, for the redistribution of specific powers from the Union and Concurrent Lists to the State List. Pending the decisions by such a Commission, the Committee made its own recommendations regarding transfer of subjects to the State List. The Committee recommended that the residuary power of legislation and taxation conferred by Article 248 and Entry 97 of the Union List should be vested in the State Legislatures. The Committee argued that with the detailed listing of matters in the three Lists there was no need to provide for the residuary powers. But if it was deemed necessary to continue with it, such power should belong to the States as in the United States. It also recommended that the State Legislature should possess the power to amend or repeal an Act

passed by Parliament under Article 252 (Power of Parliament to legislate for two or more States by consent and adoption of such Legislation by any other State). The ratification of Amending Bill of the Constitution should be by three-fourths of the State Legislature or at least two-thirds of the total population of the country.

The emphasis on autonomy became particularly sharp in the Committee's recommendation on financial relations. It recommended that major part of Union Government's power of taxation should be transferred to the States and to vest the States with powers of individual licensing, except for industries of national importance or of all-India character or which have a capital of Rs. 100 crores. The Committee would make the Government of India responsible for providing the foreign exchange needed by any industrial undertaking licensed or started by a State through block grants on the recommendations of a Permanent Finance Commission or in consultation with the Planning Commission. The Committee recommended that the Finance Commission should be a permanent body with its own secretariat, and to reduce the Central control over the planning programme in the States. It recommended that the existing Planning Commission be set up with only an advisory role. The Committee also recommended establishment of Planning boards in the States.

All decisions relating to inter-State rivers should be taken by the Supreme Court and satisfactory provisions in the Constitution should be made for implementing its decision. At the same time, the Committee recommended that no appeal from a High Court should lie in the Supreme Court in ordinary, civil, criminal or other matters whatever the pecuniary interests involved and whatever the sentence imposed, except in a case involving constitutional issues or the interpretation of a Central Act. It also suggested that the State Legislatures should have a voice in the removal of High Court Judges.

The Committee's quest for an "ideal federal system" led it to suggest restrictions not only on the power of Parliament and the Government of India, but also on the jurisdiction of the Supreme Court "to a degree which will reduce the Court's authority enormously and deprive the country of the immense good which the Court had done and is capable of doing."[37] In reply to a question from V.S. Maniam that the committee's recommendations to curb the appellate authority of the Supreme Court had been described by some critics as "Most reprehensible," Dr. Rajamannar sharply reacted to it. "What we have suggested", he said, 'is what obtains in other countries with a federal system of government. The classic instance is the Supreme Court of U.S.A."[38] Without considering whether the changes recommended were necessary or beneficial, the Committee, simply took the Constitution of the United States as its beau-ideal and sought to refashion the Supreme Court of India accordingly. No less startling is the Committee's proposal that the State Legislature should have a voice in the removal of High Court Judges.

It is important to note that the Committee was asked by its terms of reference to suggest constitutional changes not to secure the extent of autonomy necessary for proper governance, but the "utmost autonomy" possible in a federal set-up. One can understand autonomy if it is construed as synonymous with decentralization, but the concept of "utmost autonomy" is incongruous with a federal set-up as it can lead only to anarchy. The Rajamannar Committee suggested deletion of Articles 256 and 257 of the Constitution in their entirety. These Articles empower the Union Government to issue directions to the State Governments to ensure that the latter comply with and do not impede or prejudice, the laws of the Union or the Union Executive in the exercise of its authority. Together with it, the Committee suggested the repeal of emergency provisions, especially Articles 356, 357 and 365. This would reduce the Centre to complete impotence in dealing with any State which chooses to defy it or even where there is danger of the administration breaking down because of ministerial instability.

The Rajamannar Committee report is wholly unsatisfactory. But it does not mean that the Report lacks a constructive character altogether. Its comments on the financial aspects, on the Planning Commission and on the Governors are important and need serious consideration. There is a very strong case reforming the present system, but not its replacement. The Rajamannar Committee's grievance is not the abuse of the Constitution but the Constitution itself.

The Central Government completely ignored the Rajamannar Committee Report. Its

37. A.G. Noorani, "Centre-State Ties–a wrong approach." *Indian Express*, New Delhi, July 18, 1971.
38. *The Sunday Statesman*, New Delhi, July 4, 1991.

contention throughout had been that since the Committee was set up by the Government of a State, it had nothing to do with its report. Reacting to the demand for the appointment of a high-power commission on the questions of giving more powers to the States, the Prime Minister expressed the view that the Constitution itself was capable enough to deal with any problem emerging form the Centre-State relations and consequently there was no necessity to review the Constitution as recommended by the Rajamannar Committee. The Prime Minister also pointed out that the real problem in the Indian federal system was in respect of sharing the scarce resources and as long as resources remained scarce, changes in the Constitution would be of little help.

The Central Government accepted on March 13, 1975, the Administrative Reforms Commission view that no changes in the Constitution were called for to ensure proper and harmonious Centre-State relations. The Union Cabinet felt that the existing provisions of the Constitution were adequate to meet any situation or resolve any problem that might arise between the Centre and the States. In coming to this decision, the Cabinet also took note of the recommendations of the Rajamannar Committee as well as the White Paper presented by DMK Government to the State Assembly in April 1974.The Cabinet's considered view was that the White Paper of the Tamil Nadu Government had proposed even drastic changes than those proposed by the Rajamannar Committee. It felt that the proposals made by Tamil Nadu Government would alter the basic structure of the Constitution and such a major change was "neither necessary nor feasible."

The Union Cabinet felt that the basic scheme of the Indian Constitution was a federation with a strong Centre and that the doctrine of a nebulous and weak Centre ran contrary to the concept of powers of the Union Government accepted by the Constituent Assembly. It recalled the observation of Jawaharlal Nehru, as Chairman of the Union Power Committee of the Constituent Assembly in July 1947 that "the soundest framework of our Constitution is a federation with a strong Centre." However, the Cabinet thought that there was room for strengthening the financial powers of the States. The Government processed the issues involved and some headway was made.

The Demand for Greater Autonomy

There is not a single democratic federation in which argument about the division of power and authority between the Union and its constituent units is over. It is a continuous process and it is the scope and quality of the debate that matters to solve the problems emerging in such a polity. But the demand for greater autonomy for the States became much louder and unrealistic after the Janata Party's victory at the polls in 1977. The Janata Party, coming into power as it did on the tidal wave of popular revulsion against Emergency, was committed to restoring public faith in open, democratic governance and part of that commitment included political and Economic decentralisation, which, in simple words, meant more powers of the States. Some of the "proposals for a comprehensive Bill to amend the Constitution", which the executive of the Janata Parliamentary party debated, included provisions restoring to the States the autonomy taken away from them during the Emergency, such as the reinclusion of forestry and education in the State List and abolition of Article 257-A, inserted by the Forty-second Amendment Act, enabling the Central Government to deploy Union armed forces in any State on its own discretion and initiative.

This gave a fillip to the demand for greater autonomy for the States and it started in West Bengal immediately after the June 1977 Assembly poll, and the CPM-led Left Front Government assumed office. The CPM Party was Janata's ally in the March 1977 Parliamentary poll. In October 1977, the West Bengal Chief Minister, Jyoti Basu, held discussions in Srinagar with his counterpart in Jammu and Kashmir, Sheikh Mohammed Abdullah. Initially, the discussion for greater autonomy between the two began as a quiet dialogue, but soon it assumed the "character of a pioneer movement," when Punjab also became their ally.

The Jyoti Basu-Sheikh Abdullah talks were followed by a meeting of the CPI(M) in West Bengal and a subsequent resolution on the subject by the West Bengal Government. Dr. Ashok Mitra, the State Finance Minister, kept the issue alive by his proposal to hold a conference of the States to consider the financial relation between the Centre and the states and the Akali Party invited the conference to be held in the Punjab. Next followed a Press Conference held by Sheikh Abdullah in New Delhi, on January

29, 1978, in which he suggested the extension of Article 370 (which governs the relation of Jammu and Kashmir with the Union) to the other states. Endorsing the stand taken by West Bengal Chief Minister, for review of the Centre-State relationship, he asserted that only strong states could lead to a strong Centre.[39]

The West Bengal Chief Minister wanted the Preamble of the Constitution to be amended to include the word "federal" in the rest of the Constitution. According to him, only foreign relations, defence, communications, currency, economic co-ordination and related matters should fall within the exclusive jurisdiction of the Union. Article 248 (relating to residuary powers of legislation) should be amended and Article 249 be deleted in order to deprive Parliament of the right to legislate on matters not enumerated in the Union or Concurrent lists, Articles 356 and 357 (provisions in case of failure of constitutional machinery in states and exercise of legislative powers under Proclamation issued under Article 356) and Article 360 (provisions as to financial emergency) should be deleted, and 75 per cent of all revenues collected by the Centre under whatever head should go to the state. Thus, among the proposals that Jyoti Basu had made, the key ones are not those which relate to the share of the states in the Central Government's revenues and planning, though these are vitally important for which the states have always clamoured irrespective of the labels of their Governments.

Anandpur Sahib Resolution

The Working Committee of the Akali Dal, at its meeting on 11 December 1972, appointed a Sub-Committee, with Surjit Singh Barnala,[40] as Chairman, to "drawing up" the draft of a 'policy programme.' The Surjit Singh Sub-Committee presented its report at the meeting of the Working Committee held in Anandpur Sahib on 16-17 October 1973. The Working Committee approved the report after a "close discussion" for being placed before the General House of the Akali Dal..

The purposes of the Akali Dal set forth in the Anandpur Sahib resolution, *inter alia* were : "to preserve and keep alive the concept of distinct and independent identity of the Panth (described as Sikh nation) and to create an environment in which national sentiments and aspirations of the Sikh Panth will find full expression, satisfaction and growth." The operative part of the Anandpur Sahib resolution related to the political goal of the Akali Dal; the ultimate objective of which was the "pre-eminence of the Khalsa (pure Sikhs)." The new Punjab, which would be achieved by merging all those Punjabi-speaking areas "deliberately kept out of Punjab," would constitute a single administrative unit "Where the interests of the Sikhs and Sikhism are specifically protected."

In this new Punjab and other States the "Centre's interference" would be restricted to: foreign relations, defence, currency and general communications. All other subjects would be in the jurisdiction of Punjab and other states which would be fully entitled to frame their own constitutions on these subjects for administration. For the administration of the aforesaid four subjects assigned to the Centre "Punjab and other states would contribute in proportion to representation in Parliament." In pursuance of this political goal, the Akali Dal would endeavour "to have the Indian Constitution recast on real federal principles, with equal representation at the Centre for all States."

It is unlikely that the country will accept a revival of the Cabinet Mission's Scheme in respect of the Union's powers as suggested by Jyoti Basu, Sheikh Abdullah and the Akalis in the Punjab, whose extremists even claim that India is a multinational State. But Prime Minister Morarji Desai's refusal either to reopen the whole gamut of Centre-State relations or even to consider of convening a conference to discuss the issue, was perhaps too brusque. Dialogue is the essence of any relations between the Centre and constituent units of a federation as both are the integral parts of a polity and a federal polity is yet to be devised which satisfactorily answers all problems for all times. This is, however, not to suggest that the Constitution should be rewritten in order to remove the imbalances and distortions.

It does not, however, mean that the Constitution is perfect in matters of financial relations. There are shortcomings which need be removed. For instance, the constitutional allocation of finances between the Centre and the states is

39. *The Times of India*, New Delhi, January 30, 1978.

40. Other members of the Committee were : Gurcharan Singh Tohra, Jiwan Singh Umranangal, Gurmit Singh, Dr. Bhagat Singh, Balwant Singh, Gian Singh Rarewala, Prem Singh Lalpura, Jaswinder Singh Brar, Bhag Singh, Major-General (Retd.) Gurbux Singh Badni and Amar Singh Ambalavi.

hardly fair to the latter. Then, the Centre has leverage in the distribution of taxes collected on behalf of the states as also in the matter of discretionary grants. The distribution of pool taxes is determined by the periodic Finance Commission and the grants-in-aid by the Planning Commission, the extra-constitutional body. The Report of the Administrative Reforms Commission noted that "the main grievances lie in the financial field" and conceded that "there was weight in the argument that as the Planning Commission is a body established by the Central Government by an executive order, it would be desirable for another body created by law, to be entrusted with the responsibility of formulating the principles governing the allocation of plan grants. Accordingly, we have recommended that the Finance Commission should be entrusted with the responsibility." The Report was submitted in June 1969 and since then much has happened to call for a review of the kind which the Administrative Reforms Commission undertook at the Centre's instance, without protest from any state, but with no tangible result. Clearly, the states need less inelastic and less inadequate resources to meet their own requirements and need to be less dependent on the Centre for grants. The study team of the Administrative Reforms Commission remarked that the excessive dependence of the states on Centre has tended to produce irresponsibility and operational inefficiency. At the Centre dominant financial powers in relation to the states have given Central authorities exaggerated notions of their importance and knowledge with the result that little allowance is made for the points of view of the states. It is important, therefore, in the study team's view that the degree of financial dependence of the states on the Centre should be reduced to the minimum, because that minimum would be adequate for the Centre having controlling powers in ensuring national integration.

Sarkaria Commission

Prime Minister Indira Gandhi announced in Parliament, on March 24, 1983, the appointment of a Commission, under the Chairmanship of Justice Ranjit Singh Sarkaria, to review the existing arrangements between the Centre and the states. The Commission submitted its Report to the Prime Minister on October 20, 1987. The recommendation of the Commission are still in the process of discussion in the Inter-State Council, which was recently established under Article 263, as recommended by the Sarkaria Commission.

Demand for Greater Devolution of Power

Delivering the Maulana Azad Memorial Lecture on "Maulana Azad and United India", in New Delhi on May 7, 1992, President R. Venkataraman said that dividing forces in India would never succeed in achieving their goal even though regional imbalances still continue to plague the economy. But he cautioned that it was prudent to take note of the changing moods of the people in India and elsewhere. Man's urge for freedom reflects itself in several facets such as political institutions, economic regimen and social status. The urge for greater say manifests itself increasing by these days, be it in Panchayat institutions, or the State's affairs or economic, social and other activities, he said, adding that the growing demand for greater devolution of power and authority by the states has to be taken note of and "accommodated if we were to hold in check the divisive forces in society." The Constitution of a country "has to grow with the changing needs of society and absorb progressive trends so as to reflect the will of the people," the President emphasized."[41]

Earlier, the political resolution of the Bharatiya Janata Party, moved by L.K. Advani, at Antyodayanagar, Gandhi Nagar, on May 3, 1992, castigated the Narasimha Rao Government for making a mess in Kashmir, Punjab, Assam and North-Eastern States and demanded the appointment of a national commission to suggest decentralization of political and economic powers. Simultaneously Chief Ministers of non-Congress governed states are grouping together to exercise pressure on the Centre for giving the states more financial as well as legislative powers. The initiative was taken by the Chief Ministers of Uttar Pradesh and Rajasthan, though no less vocal the Chief Minister of Orissa had throughout been. The Uttar Pradesh Chief Minister had warned the Centre of the dire consequences if the President's rule, under Article 356, was imposed on the States.

The demand for more greater autonomy, especially with regard to the finances has become more vocal after the U.F. combine consisting of 13 political parties, horizontally and vertically

41. As reported in *The Hindu*, New Delhi, May 8, 1992.

ideologically different to one another, the demand has become more loud and stringent. Southern States stand in the front line. Farooq Abdulla contested the 1996 elections in clear terms: "Back to the original autonomy which was the basis of Sheikh Abdullah to join the Indian Union."

SUGGESTED READINGS

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CHAPTER XIII

The State Executive

Office of the Governor

The Governor of a State is appointed by the President by warrant under his hand and seal. The term of the office is five years, but he holds it at the pleasure of the President. In the early stages of the drafting process of the constitution it was thought that the Governor should be directly elected by the people. The Drafting Committee feared friction between the elected Governor and popular ministry[1] and suggested an alternative mode of appointing a Governor. The proposal was that the State Legislature should suggest a panel of four persons (who need not be the residents of the State) and the President would appoint one of the four as Governor. Although the principle of election had until the last some supporters, but some of the Assembly members who had originally held this view came to favour nominated Governors.[2] Jawaharlal Nehru explained that he had come to favour nominated Governor partly because it would keep the Centre in touch with the States and would remove a source of possible "separatist tendencies."[3] The Constituent Assembly rejected both the proposals, of direct election and the selection out of a panel of four elected by the State Legislature, in favour of nomination by the President. It was unequivocally made clear that the Governor would not be an instrument of the Union Government. The Drafting Committee too expected the same role the Governors to play. T. T. Krishnamachari said in the Assembly that he would at once "disclaim all ideas, as far as I am concerned, that we in this House want the future Governor who is to be nominated by the President, to be in any sense the agent of the Central Government. I would like that point to be made very clear, because such an idea finds no place in the scheme of the Government we envisage for the future"[4] Krishnamachari's views on the role of the Governor were confirmed by the Committee of Governors appointed by President V.V. Giri in November 1971.

But the future could not sustain Krishnamachari's claim nor the views of the Governors Committee could have any impact on the course of events. As the coarse love of never runs smooth so does the course of politics. For example, the unusual procedure adopted in Commander Nanavati's case in suspending the sentence passed by the Bombay High Court pending the disposal of his application for leave to appeal to the Supreme Court proved that the Governor, a promoted politician, and the State Ministry when they belonged to the same ruling party, could be made to succumb to the command of the Central Government, whatever be the merits of such a behest. When the representatives of Commander Nanavati appealed to the Government of Bombay to suspend his sentence, it felt that it was an unusual procedure and decided to seek the Centre's advice. The opinion given by the Centre might not be interpreted as a direction, and it might not have even violated any legal or constitutional provision but it did show how the Centre could dictate its mind. When the Bombay Government was hesitant to adopt the unusual procedure, the Centre should have given its thought, whatever considerations might have weighed with it, to that aspect of the matter before tendering the necessary advice. The Full Bench of the Bombay High Court held that the order of the Bombay Government suspending the life sentence of Commander Nanavati had not been shown to be "unconstitutional or contrary to law." All the same, the Court expressed its profound regret at the use of extraordinary powers in the Nanavati case.

The essential idea of having a nominated Governor was to have a person as the Head of the State who should maintain himself on a higher plane and would hold the scales even without any

1. *Draft Constitution of India,* p. 7.
2. Among them were T.T. Krishnamachari, Mrs. Durgabai, B.G. Kher and Pandit Govind Ballabh Pant.
3. *Constituent Assembly Debates,* Vol. VIII, pp. 454-6.
4. *Constituent Assembly Debates,* Vol. VIII, p. 4.

political considerations, and, if necessary, to stand up on his own against the State Government as well as against the Union Government . The Governor "is the representative not of a party,"observed the Chairman of the Drafting Committee, "he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be regarded as good, efficient, honest administration."[5] The Governor was, therefore, neither expected to be a puppet in the hands of the State Ministry nor should he become a mere instrument in the hands of the Union Ministry." But how far partymen specially if they happen to be candidates defeated at parliamentary elections," pertinently puts N. R. Deshpande, "can stand squarely against Cabinets whether in the States or at the Centre, particularly against the latter, is highly problematical." Hitherto, barring a few appointments, Governors have been appointed purely on party considerations. And, then, Governorship is interchangeable with the State Chief Ministership or Ministership at the Centre at any time when deemed politically expedient.[6]

Qualifications and Conditions of Office

A Governor must be a citizen of India and at least thirty-five years of age. He must not be a member of either House of Parliament or of a House of the Legislature in any State. If he is a member of any Legislature, he vacates his seat on assuming office. Nor shall the Governor hold any office of profit.[7] He is entitled, without payment of rent, to the use of his official residences and is also entitled to such emoluments and allowances and privileges as may be determined by Parliament by law. Until provision was to be made by Parliament the salary of the Governor was fixed by the constitution at Rs. 5,500 per mensem plus allowances and privileges as the Governor of the Corresponding Province, was entitled to immediately before the commencement of the Constitution. The Governors (Emoluments, Allowances and Privileges) Amendment Act, 1986, doubled the monthly emoluments of Governors to Rs.11,000 with retrospective effect from April 1,1986. Their emoluments and allowances are not to be diminished during their terms of office.

Two conventions are now well established with regard to the appointment of a Governor. In the first place, the Governor must be acceptable to the State to which he is likely to be appointed. The Administrative Reforms Commission shared the view that the convention is a healthy one and should continue. The practice is that the Union Government consults the Chief Minister of the State concerned prior to the appointment of a Governor. The Union Government has also conceded that if a Chief Minister bases objections on grounds that are valid, or at least agreeable,the Union may drop his name. But the Union is not prepared to concede to any Chief Minister the right of veto on the ground that the proposed nominee is a member of a particular political party, or that he is drawn from the ranks of the civil or defence forces. The Administrative Reforms Commission had recommended that Judges on retirement should not be appointed Governors. However,a Judge who entered public life on retirement and became a legislator or held an elective office might not be considered ineligible for appointment as Governor. But the Government does not share this view. It feels that barring retired Judges for being appointed as Governors is going beyond the scope of Article 157 and there may be no particular advantage in rigidly excluding Judges without reference to the merit of individual cases.

The second convention is that person selected must normally be an outsider,that is, resident of another State. While expressing his fears in the Constituent Assembly on an elective Governor, Jawaharlal Nehru said that it would be infinitely better if a Governor was not intimately connected with the local politics and factions in a State and should be a more detached figure,acceptable to the State no doubt,but not known to

5. *Ibid*, pp. 546.
6. For instance, K.M. Munshi, Sri Prakasa, N.V. Gadgil, V.V. Giri, K.N. Katju.
7. Raghukul Tilak was appointed Governor of Rajasthan in early May, 1977 and the date of his arrival at Jaipur had also been announced. When he did not arrive on the appointed day, it was being said that a constitutional hitch had arisen over his appointment. Tilak was a member of the Rajasthan Public Service Commission in the fifties and Article 319 (a) debars a former member of the Public Service Commission from taking up a Government job. Later it was pointed out that the Governor of a State is not a Government employee since he was appointed by the President and drew his salary from the Consolidated Fund. This point was clarified by the Supreme Court on May 4, 1979 in Dr. Raghukul Tilak's case. The court said, "It is no doubt that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an employee or servant of the Government of India...."

be a part of its party machine.[8] So far there had been only two exceptions to this practice, the first Governor of West Bengal, H.P. Mukherjee, and the Governor of Mysore (now Karnataka), who was formerly the ruler of the Mysore State and later its Rajpramukh.

A Governor holds office for a period of five years and it is subject to extension. The Administrative Reforms Commission suggested that a Governor should not be eligible for further appointment after the completion of his term. The Rajamannar Committee also took an identical view. But the view of the Union Government was that a Governor should not ordinarily be eligible for further appointment after the completion of his term, but no express restriction should be placed thereon.

A Governor may resign sooner or may be removed earlier, as Tamil Nadu Governor Prabhudas Patwari was removed in 1980 and Raghukul Tilak, Rajasthan Governor,in 1981,as he holds office during the pleasure of the President which for all intents and purposes means the pleasure of the Union Ministry. But he cannot be recalled on the demand of the State Ministry. The United Front Government of West Bengal demanded the immediate recall of Governor Dharam Vira. The Union Government categorically rejected the demand. The Opposition in the Karnataka Assembly demanded first that Governor Uma Shankar Dikshit should resign; because he was a partisan and, subsequently, the demand for this recall was also made. To yield to demand for recall amounts to the exercise of a right to a dismissal of a Governor by the State Ministry.

The Provincial Constitution Committee had proposed for the appointment of a Deputy Governor in each State, but the Drafting Committee did not accept the proposal. The Committee was of the view that it would be sufficient to include a provision in the Constitution enabling the State Legislature or the President, if the Governor was to be appointed by him,to make necessary arrangements to discharge the functions of the Governor in an unforeseen contingency. The Committee made a specific suggestion that it could be laid down in advance that the Chief Justice of the State would fill the casual vacancy.[9] It is now a well recognized convention to appoint the Chief Justice of the High Court of the State where the vacancy suddenly occurs. But Sri Prakasa, who had been a Governor himself, regarded it a bad convention.[10]

The Constitution (Seventh Amendment) Act, 1956, makes a provision in Article 153 for the appointment of the same person as Governor for two or more States. The States with common Governor retain their own separate Legislatures and Councils of Ministers, and they function separately of each other. The common Head is the only link between them as far as their individuality is concerned. Where the same person is appointed as Governor of two or more States, the emoluments and allowances payble to the Governor are allocated among the States in such proportion as the President may by Order determine. The States of Punjab and Haryana,immediately after the organisation of Punjab in 1956, had a common Governor for some time and so had Assam and Nagaland.Till recently, the States of Assam, Manipur, Meghalaya and Nagaland had a common Governor. Now it is one for Assam and Meghalaya.

The President may also appoint the Governor of a State as the Administrator of an adjoining Union Territory, as in the case of Chandigarh, and in that case he acts as Administrator independently of his Council of Ministers.

The Governor is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done by him in the exercise and performance of those powers and duties. No criminal proceedings can be instituted or continued against the Governor in any court in respect of any act done in his personal capacity during his term of office whether before or after he entered upon office as Governor. But such proceedings can be instituted or continued after the Governor demits his office and the period for which civil proceedings could not be instituted or continued shall be excluded for the purpose of the law of limitation.

ROLE OF THE GOVERNOR

Dual Role

Until the passing of the new Constitution in1950,the Governor-General of India had a dual function to perform. He was both a representative of the Crown and the link between the Crown and the Government of India through which the Crown and the British Government exercised its

8. *Constituent Assembly Debates*,Vol. VIII, pp. 454-56.
9. *Draft Constitution of India*, pp. 7-8 and footnote to Article 138.
10. Sri Prakasa, *State Governors in India*, p. 41.

control and authority. With the introduction of Provincial autonomy, under the Government of India Act,1935, the Provincial Governors also came to assume a dual position. In relation to the Provincial Government, the Governor, except for the functions in the field of special responsibilities and discretion, became the constitutional head and he acted on the advice of his Council of Ministers responsible to the Provincial Legislature. But whenever the Governor acted in the discharge of his special responsibilities or in the exercise of his discretion, he acted independently of his Council of Ministers and was subject to the authority, superintendence and control of the Governor-General and through him to the British Government. This historic role of the Governor of having to assume a dual character continued under the 1950 Constitution. He bears certain responsibilities to the President as executive head of the State and is,thus, a link with the Union. In order to assume this vital role and function effectively in the discharge of his responsibilities that the Constituent Assembly abandoned the original proposal of an elective Governor.

The dual function of the Governor may be divided into two separate fields : (1) the State field and (2) non-State field.

THE STATE FIELD

Discretionary Powers

The form of Government in States, as at the Centre, is parliamentary and this is the basic feature of the Constitution. The Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions,except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. The Constitution nowhere confers on the President discretionary powers, though the issue had remained controversial. In order to remove doubt about it the Forty-second Amendment specifically made the advice tendered to him by the Ministers binding. The Forty-fourth Amendment added proviso to Article 74 (1) and introduced a little element of flexibility by allowing the President the option to refer back the advice for reconsideration of the Council of Ministers, but the President must act on the advice tendered to him after reconsideration.

The Constitution makes no attempt to define the discretionary powers of the Governor, except those expressly stated in the Constitution relating to certain matters concerning the administration of tribal areas in Assam and Meghalaya, the Tuensang area of Nagaland and the Hill areas of Manipur, and the Telengana region of Andhra Pradesh and the maintenance of law and order in Nagaland. The Constitution (Thirty-sixth Amendment) Act, 1975, confers on the Governor of Sikkim special responsibility "for peace and for an equitable agreement for ensuring the social and economic advancement of different sections of the population of Sikkim" and in the discharge of his special responsibility; the Governor, subject to such directions as the President may, from time to time, deem fit to issue, act in his discretion. The President may by order made with respect to the State of Maharashtra or Gujarat provide for any special responsibility for the establishment of separate development boards for Vidarbha, Marathwada and rest of Maharashtra or as the case may be Saurashtra, Kutch and the rest of Gujarat, for equitable allocation of funds for development expenditure on the above areas, and an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in service under the State Government in respect of all the said areas.

Article 163(2) gives to the Governor more or less a *carte-blanche* by providing that if any question arises whether any matter is or is not a matter with respect to which the Governor is by or under the Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. Read with it are the provisions of Article 160. This Article, which is seldom noted, highlights the potentialities of the office of the Governor. It provides that the President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in Chapter II of Part VI relating to the Governor. In the hands of an astute Governor all these powers can assume great significance.

Appointment of the Chief Minister

Besides these express and defined discretionary powers, the discretion of the Governor extends to certain undefined and unregulated fields. The foremost among them is the discretion to choose the Chief Minister on whose advice the Ministers are to be appointed. As the Constitution

enjoins collective responsibility of the Council of Ministers to the State Assembly, it is obvious that the Chief Minister should be a person who commands a majority in the State Assembly and he selects his team from that majority of the legislators so that all together may play the game of politics and ensure a stable government. If there is a clear majority of one party the task of the Governor is not difficult and there is no dispute about it. The Governor summons the leader of the majority party and commissions him to form the Government. If no party commands a real majority, especially in a multiple party system, the Governor exercises a definite discretion in the choice of a Chief Minister. It is here that acute controversy may arise and even resort to courts is likely to be made, as in U.P. in November 1996. Under compelling reasons the aggrieved party took the matter to the Allahabad High Court which gave its verdict against the decision of the governor.

The ministerial imbroglio in the states of Madras and Travancore Cochin after the first General Elections produced unsavoury repercussions on the political life of the country and the evolution of democratic institutions. The Congress failed to secure a clear majority in the Madras State Assembly and the party was in disarrary. The outgoing Congress Ministry recommended to the Governor the nomination of C. Rajagopalachari to the Legislative Council and the Governor accepted the recommendations. Immediately after his nomination the Governor summoned Rajagopalachari as the "prospective leader" of the Congress Legislature Party and commissioned him to form the Government. This enraged public opinion and the validity of Rajagopalachari's nomination to the State Legislative Council was challenged in the Madras High Court. Still worse was the nomination of Morarji Desai, who had been earlier defeated at the poll for Assembly seat, to the Bombay Legislative Council, and his appointment as the Chief Minister. The Governors' Committee (1971) severely opposed the practice of appointing non-legislators or nominated members of the State Legislative Council as Chief Ministers. But this practice though unhealthy is well entrenched.

In Travancore Cochin (now Kerala)with the breakdown of the Congress Government in 1953, the Assembly was dissolved although the Leader of the Opposition asked the Rajpramukh to allow him to form a coalition Government of the United Front of the Leftists, excluding the Praja Socialist Party. In the elections that followed no party could secure a majority, but the Rajpramukh summoned the Leader of the Praja Socialist Party,with only 19 members out of a total membership of 118 in the State Assembly. This was bad enough. But the worst was the Kerala Governor's action in commissioning Achyuta Menon, a Member of Parliament, to form the Ministry after the resignation of Namboodiripad Ministry in 1969.

After the General Elections in 1967 a piquant situation arose in some of the States where no single party could claim a clear majority to form the Government, although the Congress had emerged in all those states as the largest party. The non-Congress parties expressed the view that in such a situation the Governor must invite the Opposition to form the Government and if the Opposition failed it was only then that the Governor should carry out his "soundings" to ascertain who could command the requisite majority. This issue was closely examined by the Governors'Committee. The Committee expressed the opinion that the leader of the largest single party, when no party commands an absolute majority, has for that reason alone no absolute right to claim that its leader should be summoned to form the government to the exclusion of others. The relevant test was "not the size of the party but its ability to command the support of the majority in the Legislature," the Committee maintained. The Committee suggested that if prior to the General Election some parties combine on an agreed programme or an electoral understanding and if such a combination gets a majority, the Governor may invite the commonly chosen leader of the combination; to form the Government. If the combination comes into existence after the General Election with a view to forming the Government, the leader of such a combination should also be elected by all the members of the parties or groups. The task of the Governor, the Committee explained, becomes easy under the circumstances as it avoids the necessity of the Governor checking up with different leaders or individuals as to their allegiance. Conflicting claims have quite frequently been made and undemocratic devices are often resorted to establish the facade of majority.

Dismissal of a Chief Minister

Dismissal of a Chief Minister, which implies *ipso facto,* dismissal of the Ministry, has generated the most acute controversies and pas-

sions in the recent years, When the West Bengal Chief Minister, Ajoy Mukherjee, was dismissed by Governor Dharam Vira, it was argued that the Governor should have acted like the British Crown and , accordingly, he could not dismiss the Chief Minister unless he himself resigned or there was an adverse vote against him in the State Assembly. This is the correct position, provided the Chief Minister continues to receive the same support of the same coalition or party, on the basis of which he was appointed. Ajoy Mukherjee headed the United Front Government and the group of legislators led by P.C. Ghosh was one of its constituent groups. P .C . Ghosh and his follower legislators defected from the United Front and the Governor asked the Chief Minister to forthwith summon the Assembly, in order to ascertain whether his coalition still enjoyed the majority. The Chief Minister did not agree with the Governor. The Governor thereupon made his own assessment of the strength of the United Front Government in the Assembly and as he thought that the Front no longer enjoyed the majority support, Ajoy Mukherjee was dismissed from the office of Chief Minister. The action taken by the Governor was challenged in the West Bengal High Court through a writ petition. Justice B.C. Mitra upheld the action taken by the Governor and ruled that the Governor "had absolute, exclusive, unrestricted and unquestionable discretionary power" to dismiss Chief Minister and appoint some other person as the Chief Minister and to appoint a Council of Ministers on his advice.[11]

But the action taken by Uttar Pradesh Governor, Gopala Reddy, in dismissing Chief Minister Charan Singh was not in conformity with the well-accepted canon of constitutional propriety, though in the eyes of law his action was unquestionable. The Congress (R), a participant in the Government headed by Charan Singh, withdrew its support and the Congress Ministers demanded in a meeting of the Cabinet that the Chief Minister should immediately summon a meeting of the State Assembly in order to measure the strength of his BLD (Bharatiya Lok Dal) Party on the floor of the House. Chief Minister did not originally accept the suggestion,but subsequently agreed that the Assembly should meet on October 6,1970. But before the Assembly could meet on the scheduled date, the Governor dismissed the Chief Minister from office as he was satisfied on his own assessment that the Chief Minister had lost the majority support in the State Assembly. This was done on October 2,1970. Both the State Government and the Union Government became political suspects and the non-Congress elements, inside as well as outside the State,characterized the Governor's action as the rape of democracy.

The legal position with regard to the dismissal of a Chief Minister is clear. Ambedkar explained to the Constituent Assembly that as the Ministry held office during the pleasure of the Governor, "he has to see whether and when he should exercise his pleasure against the Ministry." In *M.P.Sharma* v. *P.C. Ghosh* the West Bengal High Court ruled that collective responsibility of the Council of Ministers to the State Assembly does not in any manner fetter or restrict the pleasure of the Governor during which Ministers hold office. But this is precisely not the essence of a parliamentary system of government and more so when the polity is federal. Unrestricted power vested in the Governor to dismiss a Chief Minister commanding a majority in the State Assembly is sure to strain Centre-State relations, particularly when the Party in power in a State is different from the Party in Office at the Centre. The action of the Governor is sure to be construed as suspect. In the absence of well-recognized conventions in the exercise of discretionary power by the Governor to dismiss a Chief Minister, it will be safe to state that a Chief Minister must not be dismissed except on an adverse vote by the State Assembly or unless there are special exceptional circumstances compelling the dismissal. What those exceptional circumstances can possibly be, it is difficult to define. But if the Governor is convinced that the Ministry has lost its majority and he does not or hesitates[12] to immediately summon the State Assembly for its verdict,or the Chief Minister does not resign on an adverse vote on the floor of the House,[13] or the Ministry indulges in political

11. *M.P. Sharma* v. *P.C. Ghosh,* West Bengal C.W. N. 328.
12. Gurnam Singh, Chief Minister of Punjab, hesitated to resign when his own Akali Party revolted and the Appropriation Bill was defeated. The Governor, D.C. Pavate, sent an oral message, through his secretary, to Gurnam Singh, that he would be dismissed if he did not resign by next morning. Pavate, D.C., *My Days as Governor,* p. 31.
13. DMK Ministry headed by M. Karunanidhi was dismissed, in January, 1976, on serious charges of corruption. Sarkaria Commission was appointed to inquire into the charges. Chandra Shekhar told the Press in January 1992 that he had advised the President to dismiss the DMK Government in Tamil Nadu and impose President's rule because of his "national duty" when he was Prime Minister." He told reporters that he tried to pursuade then Chief Minister M. Karunanidhi to change his ways at least twice, when he did not agree, it was his "national duty" to dismiss the DMK Ministry. As reported in *The Pioneer* , New Delhi, January 16, 1992.

manoeuvring to keep itself in office,or that it is engaged in political activities which are likely to endanger national security, or carries out maladministration and corruption to secure political advantages,the Governor shall be within his right to exercise his discretion in dismissing such a Ministry. If a Chief Minister is found guilty of corruption or nepotism by an independent tribunal and declines to resign, the Governor would be entitled to dismiss him.[14]

B. R. Ambedkar was clear on the point that a Minister,Central or State, could be dismissed on the ground of corruption. He explained to the Constituent Assembly that it would be perfectly open to the "President to call for the removal of a particular Minister on the ground that he is guilty of corruption or bribery or maladministration, although the particular Minister probably is a person who enjoyed the confidence of the House. I think honourable members will realise that the tenure of a Minister must be subject not merely to one condition but to two conditions and the two conditions are purity of administration and confidence of the House." The Governor can exercise this power as much as the President. But if he is to wield such power, he must act with manifest impartiality. The dismissal of Dev Raj Urs Ministry in Karnataka early in January 1978, ignoring the demand that it be allowed to demonstrate its majority in the State Assembly,was an action which had little to commend it. For many months Dev Raj Urs had been engaged in a bitter political war with K.H. Patil,the President of the Pradesh Congress Committee,and as a consequence the administration was paralysed. As members of the party abandoned Dev Raj Urs in numbers, and as allegations of corruption against him were being made before the Grover Commission, he was losing control of the situtation, no doubt, but the Governor ought to have given him the opportunity of a test to measure his strength in the State Assembly, especially as that test was only three days away from the day of his dismissal. The Governor could wait for another three days as he had held so far and the Grover Commission Report was not expected to submit its interim report at an early date.

When there was a vertical split in the ruling Telugu Desam Party 109 members of the Andhra Pradesh Legislative Assembly with N.T. Rama Rao and 91 with the splinter group headed by the Telugu Desam leader, Nadendla Bhaskara Rao, neither had overall majority in the House. Here steps in the discretion of the Governor. When the Congress (I) with 58 members expressed support to N. Bhaskara Rao, Ram Lal, the State Governor,called upon him to form the Ministry, and following the example of President Sanjiva Reddy in asking Charan Singh to form the Government although Morarji Desai, the outgoing Prime Minister, had the largest single group in the House of the people (Lok Sabha), he asked the new Chief Minister to prove his strength on the floor of the House within one month. The Jammu and Kashmir Governor,Jagmohan, followed the same example when the Kashmir National Conference split into two and he dismissed Dr. Farooq Abdullah's Ministry.

The action of Governor Ram Lal was vehemently criticized throughout the country on his refusal to give N.T.Rama Rao time to test his strength on the floor of the Assembly and his permission to Bhaskara Rao to prove his majority "within a month." Mrs. Indira Gandhi intervened and Ram Lal resigned which was for all intents and purposes his recall as N.T. Rama Rao was given an opportunity to prove his strength and was, once again, inducted as Chief Minister. Governor Jagmohan's dismissal of Dr.Farooq Abdullah was well-orchestrated and here again the henchman was the Congress (I).

Power of Dissolution

The Constitution gives to the Governor the power of dissolution and the convention is that it is always done on ministerial advice. The Constitution does not bind the Governor as Article 74(1)binds the President to always act on the advice of his Council of Ministers. A question, therefore, arises whether the Governor is bound to dissolve the State Assembly when advised by the Chief Minister who has lost his majority in the Legislature?In Britain the convention is that the Prime Minister who has been defeated in the House of Commons has the right to advise the King to dissolve the House and order fresh elections and this advise is invariably accepted by the Monarch. It has been argued that the British precedent should be a model for India, especially in the States which are cluttered with regional parties divided both horizontally and vertically and loyalties always shifting. The pattern is a coalition ministry, if no single party succeeds in

14. Pratap Singh Kairon, Punjab Chief Minister, Biren Mitra, Orissa Chief Minister and Bakshi Ghulam Mohammed, Chief Minister, Jammu and Kashmir, were indicted for corruption, but they resigned when adverse verdicts were given against them.

securing a majority. If the coalition breaks up or the Chief Minister ceases to command a majority and is defeated on an adverse vote, there can be no legitimacy in asking for dissolution. If such demand is conceded there shall be a series of mid-term elections in the State as the life of a coalition ministry is always precarious. In such circumstances, the Governor is within his right to decline to accept the advice of the Chief Minister to dissolve the State Assembly. The Governor has again the right to dissolve the Assembly if the Chief Minister ventures to take shelter under Article 174(1),which allows a gap of six months between two sessions, when he had lost the majority support either because of defections or because some of the constituent parties in the coalition government withdrew from it and in spite of the advice of the Governor to establish his majority on the floor of the Assembly. In such an eventuality before ordering dissolution of the Assembly, the Governor may assess the possibilities of forming an alternative Government. But it involves the risk of horse- trading, not a rare phenomenon in State politics.

Discretion is neither Arbitrary nor Capricious

But acting in discretion does not mean acting arbitrarily or capriciously. Discretion in its ordinary meaning signifies unrestricted exercise of choice or will; freedom to act according to one's own judgment."But when applied to public administration, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment or conscience uncontrolled by the conscience or judgment of others. Discretion is to discern between right and wrong, and therefore whoever hath power to act at discretion is bound by the rule of reason and law."[15] Discretion must, therefore, be exercised honestly on judicial grounds and substantial reasons. The Constitution meant the Governor to act generally on ministerial advice but reserving to himself certain discretionary powers to be exercised by him untrammeled by ministerial control. At the Governors conference in November, 1970 Mrs. Indira Gandhi told the Governors, "You can be the guide, philosopher and friend to your respective governments, while also discharging your constitutional responsibilities."[16] Some of these responsibilities are in express terms whereas others flow ineluctably from the Governor's position as a constitutional head of the State functioning under a parliamentary system.

The Constitution vests in the Governor the following discretionary powers and these are spread over in different parts :

(1) The appointment of the Chief Minister [Article 164(1)];
(2) Dismissal of Ministers [Article 164(1)];
(3) Dissolution of the Assembly [Article 174 (2) (b)];
(4) Requiring the Chief Minister to submit information relating to legislative and admistrative matters [Article 167(b)];
(5) Requiring the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council of Ministers [Article 167(c)];
(6) Withholding assent to the Bill passed by the Legislature and sending it back for reconsideration [Article 200];
(7) Reserving a Bill duly passed by the State Legislature for the assent of the President [Article 200];
(8) Seeking instructions from the President before promulgating an Ordinance dealing with certain matters [Article 213(1)];
(9) Submission of a Report to the President advising breakdown of the constitutional machinery in the State [Article 356];
(10) In the case of the Governor of Assam certain administrative matters connected with the Tribal Areas and settlement of disputes between the Government of Assam and the District Councils of an autonomous district with respect to mining royalties [Schedule Sixth Paras 9(2)and 18 (3)]; and
(11) Special responsibility of the Governor of Sikkim for peace and for equitable agreement for ensuring the social and economic advancement of different sections of the population of Sikkim.

Alexanderowicz expressed the opinion that in the exercise of his functions in the undefined field the Governor will be under the complete control of the President. He advanced the argu-

15. Tomlin's Law Dictionary.
16. *Indian Express*, New Delhi, November 31, 1970.

ment that if a Governor chooses to exercise his discretion independently of the President and for that matter the Union Government, the President will be entitled to withdraw his pleasure of continuing the Governor under Article 156(1).[17] But this is not a correct appraisal. It is a well-recognized principle of constitutional law that an authority vested with constitutional and statutory powers must exercise powers on his own judgment, as the Maharashtra Governor did in the matter of A.R.Antulay's prosecution,even where they are discretionary. If he does not exercise his judgment and act on the dictation of some other authority, the exercise of such power would be bad and the action of the Governor is justiciable in courts. In the exercise of his discretion, therefore, in appointing the Chief Minister or in removing him from office or in dissolving the State Assembly or even in recommending to the President the taking over of the State Government under Article 356, the Governor must act on his own judgment. It will be unconstitutional and unlawful for the President, that is, the Union Government, to try to interfere or influence the exercise of discretion by the Governor.

THE NON-STATE FIELD

Governor as Representative of the Union

The functions of the Governor in the non-State field are embodied in Part XI of the Constitution. Article 256 enjoins that the executive authority of a State shall be so exercised as to ensure compliance with the laws made by Parliament. Article 257 provides that the executive power of a State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union and the executive power of the Union extends to the giving of directions to a State as may appear to the Union Government to be necessary for that purpose. The executive power of the Union also extends to giving directions to a State for the construction and maintenance of means of communications declared to be of national or military importance, and also for giving directions to take measures for the protection of the railways within the State. Under Article 258 the Union Government may entrust the State Government or its officers functions in relation to any matter to which the executive power of the Union extends.

All these provisions unprecedentedly widen the authority of the Union Government and restrict both positively and negatively the executive authority of the State Governments. The sanction behind the directions of the Union Government is the provisions of Article 365. It provides that if a State Government fails to comply with or to give effect to any directions given by the Union Government the President may declare the failure of the constitutional machinery in that State and may assume to himself all or any of the functions of the State Government. It means that the authority of the Union Government runs parallel to the authority of the State Government. This is a clear departure from the doctrine of a constitutional government in a State according to which the Governor acts on the advice of his Council of Ministers. In regard to these matters the Governor cannot act on the advice of his Council of Ministers if it runs counter to the directions of the Union Government. For the proper carrying out of these directions, he may so distribute the business of the Government that the directions are fully carried out. In last resort, he may recommend to the President to declare breakdown of the constitutional machinery of the State.

The role of the Governor is significantly marked when he performs the constitutional duty to report to the President whether a situation has arisen under which the Government of his State cannot be carried on in accordance with the provisions of the Constitution and, accordingly, the State should come under the President's rule. This constitutional power of the Governor has become extremely controversial. Although the Constitution empowers the President to take over the Government of a State without the Governor's report if he is satisfied that such a course should be taken under Article 356,all the thirty-six cases, prior to the dismissal of the Ministries and dissolution of the nine State Assemblies in April 1977 and once again in February 1980, by the President himself,[18] are cases on which action had been taken on the report of the Governors. It is pointed out that it is here that the Union Government can pressurize the Governor to report in such a manner that the State Government could be dismissed and the dismissal of Charan Singh Ministry in 1970 in Uttar Pradesh is familiarly cited. But Charan Singh himself in his capacity as the Union Home Minister, attempted to pressurize some of the Governors of nine Northern

17. Alexanderowicz, N.H., *Constitutional Development in India*, p. 145.
18. The States were: Punjab, Himachal Pradesh, Haryana, Uttar Pradesh, Bihar, West Bengal, Orissa and Rajasthan.

States in which Assemblies were desired to be dissolved in April, 1977 and the Bihar Governor, Jagan Nath Kaushal, did not submit to such pressure. Another important instance of such a pressure was the dismissal of the Karunanidhi Ministry in Tamil Nadu in January 1976 on the inspired report of the Governor. Home Minister Zail Singh did not pressurize the Governors for the dissolution of the nine Assemblies. It was done on the satisfaction of the President himself, but the Home Minister did pressurize the Governors themselves to resign. In a press interview he said, "It is proper for all political appointees including Governors to resign immediately after a change of government at the Centre. At least democratic traditions demand it"; a bad logic and ill-conceived argument in a federal polity.

The intention of the Constitution-makers was that while sending his report to the President the Governor would act on his own judgment. It is certainly an improper use of his constitutional power, if the Governor acts under pressure of any kind or dictation from any quarter. The President, that is, the Union Ministry, too must act *bona fide* and reasonably. He must have authentic material and convincing data with him to sustain his judgment that the Government of a State cannot be carried on in accordance with the provisions of the Constitution. If the judgment of the Governor in making his recommendation seems to be coloured, insufficient or lacks authority, the President should not accept the Governor's recommendation and exercise his own independent judgment. If the Governor and the President both do not act *bona fide* and reasonably and on material which can constitutionally sustain their action redress can be sought in a court of law. Dismissing suits by the State Governments on the dissolution issue in 1977, Chief Justice M.H. Beg stressed that the Supreme Court had never abandoned its constitutional functions as the final judge of constitutionality of all acts purported to be done under the authority of the Constitution and it had not refused to determine question of either of fact or law so long as it had found itself possessed of power to do it and the cause of justice capable of being vindicated by its actions.

The imposition of the President's rule in the States of Rajasthan, Haryana and Uttar Pradesh after the elections of 1967 presents a revealing study. An impression went round that Governor Sampurnanand acted as a partisan and the Congress Government at the Centre had designed to come to the aid of the Rajasthan Congress Legislature Party, which was plagued by defections and faced with hostile Opposition, by imposing the President's rule within a few hours of its assumption of office. The Haryana non-Congress Government headed by Rao Birendra Singh fell on March 21, 1967 a prey to the latest sickness in Indian politics–opportunistic politicians who oscillate across the floor of the Legislature uninhibited by any principle. Although Rao's Ministry commanded forty members in an effective Assembly of seventy-eight, the Governor dismissed the Ministry and the President's rule was imposed. In his report to the President the Governor wrote, "majority of today can be a minority of tomorrow and cannot be relied upon." But a sordid drama was enacted in Uttar Pradesh, when on September 29,1970 the Governor sent his report recommending imposition of the President's rule. President Giri was on a visit to the Soviet Union and he signed at Kiev (Ukraine) on October 1 a Proclamation taking over the administrationa of Uttar Pradesh. The document along with the Governor's report was brought from Kiev by a special courier and the President's rule was imposed on October 2.The Samyukta Socialist Party's move to impeach the President was based on the ground that he had not asserted himself enough, and had without objectively applying his mind to the Uttar Pradesh situation "rubber-stamped the illegal Union Cabinet decision based on an incompetent report by the Governor." But not a little finger was raised when the Tamil Nadu Chief Minister was dismissed in January 1976, perhaps it was due to Emergency.

The Governor not being a representative of a party, but the representative of the people of the State as a whole, should keep himself off politics. As an impartial umpire his work is to see that the game of politics is played according to the rules, leaving the politicians to fight out the disputes amongst themselves. He should not conduct himself in a manner which suggests that he is inclined to support one party at the expense of the other. The rigours of Article 356 can be mitigated once the public is convinced that the Governor is in a position to exercise his own judgment unfettered by pressures form the Centre.

This problem involves two inter-connected issues. The first is the appointment of a Governor and the second relates to his removal from office. In order to give true meaning to the office of the Governor, it is imperative to choose a proper

person for filling the office. It should not be treated as a last refuge of politicians who were either rejected at the polls or pushed out of leadership by more dynamic rivals in the Party. Nor should the Governorship be treated as a sort of cold storage of politicians who could be brought back to active politics when deemed expedient.[19] If a Governor becomes an active politician and even partisan, like Ajit Prasad Jain,[20] Sampurnanand, and Gopala Reddy, Governorship forfeits popular confidence and dignity of the office disappears. They really surrender themselves to their benefactors at New Delhi. It is, therefore, highly desirable that outstanding persons in the political, social and educational life of the country, with an unimpeachable reputation of honesty of purpose and conviction,and who are not controversial figures should be appointed to this august office. The Sakaria Commission, too, made more or less indentical recomendations regarding the appointment of a Governor.

Girja Shankar Bajpai, H.P. Modi, K.M. Munhi, Mrs. Sarojini Naidu, Sri Prakasa and Kailash Nath Katju, who adorned the Raj Bhavans in the early period after Independence, are some of the shining examples who exercised a healthy influence in an unseen manner over the administration and affairs of their States. They functioned as elder statesmen outside the clash of party or parochial interests, though they were political appointees. Even during the near recent times Nawab Ali Yavar Jung. C.P.N. Singh and D.C. Pavate are still remembered with respect and affection. Nawab Ali Yavar Jung, Governor of Maharashtra, had a bearing and mind that evoked the affection of all and his advice was always valued. after years in retirement, had the reputation, despite his known failings, of a man with a mind of his own and who exuded authority. Pavate minced no matters and was straight and frank. He commanded unequivocal respect and admiration from the Akali-Jan Sangh Coalition Government in Punjab. But there is a qualitative change in the calibre of the present-day Governors,not because most of them are political appointees,but because some of them are "utterly and incorrigibly unfit for anything except to use their Raj Bhavans opportunity as a rest cure." Political appointees in the past were neither physically nor mentally decrepits. Morarji Desai's Government, however, seemed to have a weakness for Heads of State "who had long ceased to function on ally cylinders", but carried their own fads to become the norms of their official residence and style of life. The Tamil Nadu Governor, Prabhudas Patwari brought the office of the Governor into contempt with antidiluvian ways. He disregarded the rules and norms that go with the name of the place and position and rigidly introduced his own philosophy of life in the Raj Bhavan.

The tenure of the office of the Governor is equally important. A Governor holds office for a period of five years or he may be removed earlier as he holds office during the pleasure of the President. It has been rightly suggested that independence of the Governors in the performance of their duties and functions can be secured if the term of office is not extended beyond the prescribed period of five years and they are not eligible for any future assignment after their retirement either under the Union or a State Government. Holding the office at the pleasure of the President, which really means the pleasure of the Union Ministry, the lure to get extension and the attraction of an equally lucrative and prestigious assignment after retirement induce a Governor to become subservient to the Union Government. Accordingly, a provision in the Constitution should be made for a term of five years only and he must not be removed from office unless it be for proved misbehavior.

The removal from office of the Tamil Nadu Governor Prabhudas Patwari in October 1980, followed by the Rajasthan Governor in August 1981,and the resignation of Tarloki Nath Singh, West Bengal Governor, "on the advice of the Union Home Minister, Mr. Zail Singh"[21] in September 1981 have set bad and dangerous precedent as it vitally involves the dignity of the office of the Governor and more so when the removal is arbitrary and capracious exercise of powers. Appointed by the President, the Governor holds office under the Constitution during "the pleasure of the President." But the expression "Pleasure"does not give *carte-blanche* for arbitrary action. The Constitution also uses the same expression in Article 75(2) for the tenure of

19. Jogendra Singh, Governor of Rajasthan and R.D. Bhandare, Bihar Governor, were drafted by the Congress to contest the 1977 elections to the House of the People.
20. Ajit Prasad Jain, Governor of Kerala, took active part while in office in canvassing support for Mrs. Indira Gandhi's election as the leader of the Congress Parliamentary Party to become the Prime Minister.
21. Statements by T.N. Singh at Varanasi on September 15, 1981, and as reported in the *Times of India*, New Delhi, September 16, 1981.

the Ministers *vis-a-vis* the President and a similar expression in Article 164(1) regarding the Ministers in the States *vis-a-vis* Governors. The Supreme Court aptly remarked that there is no worse way to read a Constitution literally. The President can in no way dismiss a Governor without a cause than he can the Prime Minister or a Union Minister. The nature of the cause would vary with the office but in each case there must be an assigned cause appropriate to the office and acceptable to the law. But the removal fom office of the Nagal and Governor, M. M. Thomas, did not violate the constitution in dissolving the State Legislative Assembly on the advice of the Chief Minister Vamuzo, on March 27, 1992 an asking him to continue as the caretaker Government. The Central Government has indeed, no role to play in the action taken by the Governer and he was not ound to consult the President before dissolution of the State Assembly under Article 174 (b) of the Constitution.

The issue of removal of the Governor was debated in the Constituent Assembly on May 31,1949. Ambedkar rejected the suggestion that "certain grounds should be stated in the Constitution itself for the removal of the Governor". But he did not reject the necessity for the existence of "legitimate ground" for removal. He maintained that the President will enjoy certain discretion but the courts have always held that discretion is the antithesis of caprice."It seems, therefore," he argued, "quite unnecessary to burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under the formula that the Governor shall hold office during his pleasure." Earlier, T.T.Krishnamachari,another member of the Drafting Committee, had, *inter alia*, told the Assembly Members that if it was considered necessary that "the Centre must have some powers reserved for itself in order to ensure good government in the provinces" (states), those powers can be provided for. But, he immediately added, "There is no need for us to adopt an outworn system,a system which has grown, because of historic traditions, because of that figment of imagination which was actually translated into practice by British Ministers, namely, the preservation of the prerogative of the Crown in the Dominions."

The framers of the India's republican Constitution, as A.G.Noorani says,"declined to give the expression 'During pleasure'(from the Latin "*dorante bene placito*") the significance it has in English law in regard to the Crown's powers since the feudal era." The Supreme Court made an authoritative exposition on May 4,1979, in *Dr. Raghukul Tilak's* case when his appointment as Governor of Rajasthan was challenged. The Court said, "It is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an employee or servant of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President. It is a constitutional provision of the determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor....This office is no subordinate or subservient to the Government of India. He is not amenable to the direction of the Government of India. His is an independent constitutional office which is not subject to the control of the Government of India. He is constitutionally the Head of the State..." A Head of the State cannot be removed from office arbitrarily and it was not the intention of the Constitution framers to leave him unprotected against arbitrary dismissal as in the case of Patwari, Tilak, T.N. Singh and a few others.

It is also of fundamental importance that healthy conventions may be evolved to guide the Governor in the exercise of his discretion in the undefined field. It is equally important that a healthy code of conduct should be prescribed to enable the Governor to independently discharge his responsibilities to the President under Articles 356 and 357 and other emergency provisions. Ashoka Sen suggested that a body of constitutional experts should be set up representing Parliament, the State Legislatures and also the Union Government and the State Governments which should be charged with the duty of drawing up a code of conduct guiding the President and the Governors in the exercise of their respective functions under the emergency provisions of the Constitution.[22] During the last forty-two years, excluding dissolution of nine State Assemblies in April 1977 and,once again of the same number in February 1980,the President had taken over the State Governments more than fifty-seven times. The longest spell of about five years in one go was in the State of Punjab and the Constitution had to be amended each time to meet the statutory

22. Sen, Ashoka, K., *Role of Governors in the emerging Pattern of Center-State Relations in India*, p. 71.

requirements.

Punjab was the first State to be brought under Central rule after the Constitution came into force. It was on June 20,1951, that the then Congress Chief Minister Dr. Gopi Chand Bhargava, got on the wrong side of the Congress High Command and was directed to resign. Dr. Rajendra Prasad did not like the way party considerations had weighed in decisions at the government level. The Constitution had been in vogue for a little over a year and President Prasad was keen to establish sound precedents in regard to Centre-State relations, particularly in the matter of taking over the State administration.

Bad precedents seldom die as bad habits and the first bad precedent became a trend-setter. The prophetic words of Dr. Rajendra Prasad are a commentary on "unedifying" manner in which the constitutional processes have been interrupted for nearly four score times and no State has escaped from its onslaught. There is an endless clamour now for deleting Article 356 if State autonomy in a federal polity is to be safeguarded.

The Draft Constitution contained an Instrument of Instructions for the Governors and the Constituent Assembly had adopted it as well as the provision dealing with it. But both were omitted subsequently. It was felt that the matter should be left to conventions rather than to put it in the body of the Constitution as a Schedule. Dharam Vira, who had been the Governor of Punjab, West Bangal and Mysore (Karnataka), expressed the opinion that in the present context when political loyalties were shifting fast and when multi-party Governments and Governments different politically from that operating at the Centre were functioning in the States, it would be desirable to define the powers of the Governor. This would obviate, he explained, to a great extent conflicting reaction by different Governors on identical circumstances. "There can, however, be no guideliness," he said, "which can cover all situations and in these circumstances a Governor will have in any case to exercise his own discretion and judgment."[23] Dharam Vira's proposal was that if a number of constitutional experts and jurists sit together and think over the problem, they might be able to work out in various circumstances under which it would be necessary to have greater clarity in regard to the functions and duties of a Governor.

President V.V.Giri appointed a committee of five Governors[24] on November 30,1970 to consider and formulate norms under the Constitution and also to look into the question of providing guidelines for the Governors to ensure uniformity of action in identical situations. The Committee submitted its report on November 26, 1971. The report,in the words of President Giri, represented the "pooled wisdom of all the Governors" and some of its conclusions "will become the subject-matter of public discussion and may be even controversy.[25]

Governors' Committee

According to the official announcement the Governors'Committee was asked to study and report on the three issues mentioned by the President in his address to the conference of the Governors on November 20,1970, *viz.*, the appointment of the Council of Ministers, the summoning, prorogation and dissolution of the State Legislature, and the failure of the constitutional machinery in a State.

The Committee came to the conclusion that no guidelines could be provided and that, in each situation, the Governor concerned would have to take his own decision. But it suggested a system of pooling of information by a special wing in the President's Secretariat. Such an arrangement,the Committee said, aimed at putting the Governors in possession of authentic information regarding political and constitutional developments in the States from time to time. The proposed wing in the President's Secretariat, the Committee explained, would ascertain all the facts and circumstances relating to each situation which might arise from time to time requiring action by a Governor in the exercise of his powers and the reasons for the action taken by him in a particular situation. The facts as ascertained could then be confidentially communicated to all the other Governors with the permission of the President.

At the very outset the Committee categorically rejected the doctrine of the Governor being the President's agent. It emphatically held that the Governor, as Head of the State, "Has his functions as laid down in the Constitution itself

23. "Interview with Dharam Vira", *The Hindustan Times*, New Delhi,October 11, 1969.
24. Bhagwan Sahay (Jammu and Kashmir); B. Gopala Reddy (Uttar Pradesh); V. Vishwanathan (Kerala); Ali Yavar Jung (Maharashtra); and S.S. Dhawan (West Bengal).
25. Before submitting the report to the President, the Committee decided to circulate the draft report to all the Governors for eliciting their comments so that the final report should be prepared in the light of their views.

and is in no sense an agent of the President'', not even when the Government of a State had been taken over by the President under Article 356. ''The Governor does not'', the Committee observed, ''by virtue of anything contained in the Constitution, become an agent of the President.''

The Committee was opposed to Legislative action to cheek defections[26] and floor crossings for that ''would interfere with the right of dissent and would not permit genuine changes of conviction or dissatisfaction with the party and its leadership, for example, where promises or programmes remain unfulfilled.'' But the Committee would like the legislator who changed his party to seek re-election. ''This is different,'' the Committee said, ''from curbing the right of dissent or change and is in essence an extension of the exercise of responsibility which is at the root of our Constitution. ''Morally, too, in the opinion of the Committee,'' this would be the right course to adopt and may certainly restrict defections prompted only by reasons of self-interest or pursuit of power.''

With regard to the discretionary powers of a Governor, the Committee felt that these were not exhaustive. ''Even though'', the Committee observed, ''in normal conditions the exercise of the Governor's powers should be on the advice of the Council of Ministers occasions may arise when the Governor may find that, in order to be faithful to the Constitution and the law and his oath of office, he has to take a particular decision independently. It is however, realised that, in the scheme of our Constitution, such occasions will be extremely rare.'' Even in the sphere where the Governor is bound to act on the advice of his Council of Ministers, it does not mean, in the opinion of the Committee, immediate and automatic acceptance by him of such advice. In any relationship between the Governor and his Council of Ministers, it added, the process of mutual discussion was implicit, and the Governor "will not be committing any impropriety if he states all his objections to any proposed course of action and asks the Ministry to reconsider the matter. ''In the last resort, the Committee said,"he is bound to accept its final advice but the Governor has the duty to advise the Ministry as to what he considers to be the right course of action, to warn the Ministry whenever he thinks that it is taking wrong step, and to suggest to it to reconsider the proposed course of action.'' For the proper discharge of this duty, the Committee suggested, the Governor must have authentic information from his own Government and from the Union Government. The rules of transaction of business of the State should provide for such information to be supplied to the Governor and for the Union Government itself to keep the Governor duly informed.

As regards the appointment of the Chief Minister, the Committee thought, the leader of the largest single party in the Assembly (when no party had an absolute majority)has for that reason alone no absolute right to claim that he should be summoned to form the Government to the exclusion of others. The relevant test for a Governor ''is not the size of the party but its ability to command the support of the majority in the Legislature, It may be that a party, even though leading in relative strength in a Legislature, may not be able to obtain the support of other members.'' In contrast, the Committee explained, a numerically smaller party may command majority support with the help of other parties or groups. The Governor has, thus, first and essentially to satisfy himself that the person whom he invites to form the Government commands or is likely to command a majority support in the Legislature. It may even be that the leader of the party which is in a minority in the Legislature ''may also be invited to form a Government without that party necessarily entering into a combination with other parties provided that the Governor is satisfied that such a minority party leader will be able to command the support of other parties in the Assembly for its policies.''

If prior to a General Election,some parties combine on an agreed programme or an electoral understanding that if such a combination gets a majority they will form the Government and if such combination does secure the majority,the Governor may invite the commonly chosen leader of the combination to from the Government, be cause the electorate in returning such a combination in majority had already prior knowledge that it would be called upon to form the Government. The Governor in inviting such a leader,would be acting in accordance with the wishes of the electorate. Where no such arrangement existed among the parties prior to a General Election and a combination or a coalition comes

26. In pursuance of the Fifty-second Constitution Amendment Act, 1985, the Anti-defection Law was enacted and its validity was upheld by the Punjab and Haryana High Court in May, 1987. It has also been endorsed by the Supreme Court.

into existence after the elections with a view to forming the Government, various difficulties arise. In such a case, the Committee suggested, the leader of such a combination should also be elected by all the members of the parties or groups. This will avoid the necessity of the Governor checking up with different leaders or individuals as to their allegiance to the leader. Today,Governors often find themselves in the unenviable position of getting conflicting lists with names overlapping and having to send for individual members to ascertain their loyalty or allegiance to a particular group. This had been,the Committee remarked,one of the most distressing features of our political life in some of the States. If a convention was adopted, it was suggested, by which the leader of a coalition, like the leader of any political party, is chosen by election at a meeting of all the members of the different parties forming the coalition, the task of the Governor will be rendered easier.

The Committee is opposed to non-legislator or nominated members of the Legislature being chosen leaders and becoming Chief Ministers. It suggested, that if, in very exceptional circumstances, "a person who is not already elected is chosen as leader and is invited to be the Chief Minister,he must stand for election within the shortest possible time and, if not elected, should quit office forthwith." Inviting a non-member, the Committee strongly felt, is wrong,worse still is to nominate a person to the Legislature in order to make him a Chief Minister. Such a course, in the opinion of the Committee, "is contrary to the basic concept of parliamentary government."

Other Ministers are appointed on the advice of the Chief Minister, but there should be no "undue delay between the Chief Minister's acceptance of office and his tendering of advice to the Governor in regard to the appointment of the other Ministers," the Committee observed. There had been instances in which, on the formation of a new Government, the Chief Minister was sworn in and the appointment of other Ministers was kept pending. "This practice is clearly unconstitutional because Article 163 (1) speaks of the Council of Ministers, and the Chief Minister by himself without even a single other Minister, cannot be said to constitute a Council of Ministers."

As far as the Governor's pleasure is concerned the Committee was of the opinion that the test of confidence in the Ministry should normally be left to a vote in the Legislative Assembly. A Chief Minister's refusal to test his strength, when the Assembly is not in session, on the floor of the Assembly can well be interpreted as *prima facie* proof of his no longer enjoying the confidence of the Legislature. In such circumstances, the Governor" would be in duty bound to initiate steps to form an alternative Ministry." If that is not possible, he ought to report to the President,under Article 356, and recommend the dissolution of the Legislative Assembly.

But what happens if a coalition breaks up, and the Chief Minister demands the resignation of his colleagues with whom he is no longer in accord without submitting his own resignation? The Committee's answer was, "when the Chief Minister heads a single party Government, his pre-eminence is unquestioned, but in a coalition or a multi-party government, his pre-eminence is derived solely from agreement among the partners". Thus, the Chief Minister in a coalition cannot claim the right of advising the Governor in the appointment or dismissal of Ministers in such a manner as to break the arch and yet claim the right to continue as Chief Minister .Therefore,in the opinion of the Committee, the Chief Minister cannot break up the coalition by seeking to dismiss the Ministers representing the partnership, and yet claim to remain in office himself. On the other hand,the Committee held that if some Minister in a coalition "belonging to a particular party or group themselves resign due to disagreement with the Chief Minister or any other reason, the Chief Minister may not necessarily resign." If, however, his majority in the Assembly is threatened by such resignations, it would be expected of him to demonstrate his continuing strength in the Assembly by advising the Governor that the Assembly be summoned within the shortest possible time and obtaining its verdict in his favour.

The Committee made a fair discussion on the Governor's power of dissolution and his power, under Article 356, to report to the President a breakdown in the constitutional machinery of the State. On the point of dissolution the Committee was of the view that if a Chief Minister clearly lost his majority in the Assembly and faced a noconfidence motion or had yet to get the Budget adopted by the Assembly, the Governor should explore the possibility of forming an alternative Government and, failing that, act under Article 356. The Committee observed that "recourse to Article 356 should be the last resort for

a Governor to seek."

Briefly stated, the Governors' Committee has defined the role of the Governor in several ticklish situations. It clearly states that the Governor will be well within his right to dismiss a Chief Minister, if he is satisfied, that the Chief Minister has lost a majority in the Legislature and either refuses or is reluctant to test his strength on the floor of the House. The Committee also notes that the choice of the Chief Minister and imposition of the President's Rule under Article 356 are not the only two situations when the Governor has to act without consulting his Council of Ministers. Other occasions may arise where the Governor may find that to be faithful to the Constitution and the laws and his oath of office, he has to take his decision independently. The Bombay High Court and the Supreme Court upheld the decisions of the Maharashtra Governor, in ordering prosecution of A.R. Antulay, former Maharashtra Chief Minister, and ruled that the Governor was empowered to act independently and was not bound to seek the advice of the Council of Ministers.

The Committee has not wisely sought to lay down any rigid guidelines. Quite apart from the fact that it is hardly possible to provide for every contingency, such guidelines may be counter-productive in the sense that they may place the Governor in a strait jacket from which he may not be able to free himself even when circumstances so demanded. The Committee rightly remarks that "the working of the Constitution during the past twenty-one years has exposed not so much weakness in the Constitution or its alleged misuse by Governors as weaknesses in the country's political life." Therefore, in the purposeful evolution of conventions in a Parliamentary system of Government the political parties, as much as the Govenors, have a primary responsibility. It is the existence of the multiple parties and the development of the "SVD politics"-amorphous coalitions brought together by the lure of office rather than any clear political principles or programmes–that has thrown a labyrinth of problems.

The Committee's report, in the opinion of A.G.Noorani,"is a curate's egg. It is good in parts, inadequate in some and totally wrong in one major aspect. Still it is a notable contribution and one can hope that before long an all party committee will draw on it and provide a fairly definitive set of norms and conventions."[27] The Prime Minister, Mrs. Indira Gandhi, had proposed at the Governors' Conference to consult the various political parties to help evolve a code for Governors to act under the Constitution. The proposal did not take a concrete shape.

To aid the Governors, the Committee suggested the setting up of a special wing in the President's Secretariat to collate and make available authentic information regarding political and constitutional developments in all the States from time to time. This is a valuable innovation of great practical utility to Governors for taking appropriate decisions and ensuring a certain uniformity of approach in establishing.sound conventions and precedents.

Final Analysis

The exact position and role of the Governor in the body politic of the country figured prominently in the deliberations of the Constituent Assembly. While none advocated that he should be an autocrat, it was widely felt that he should be invested with adequate powers to insure the maintenance of high standards of government. This view was upheld by Jawaharlal Nehru and Sardar Vallabhbhai Patel. In his Memorandum on the Principles of a Model Provincial Constitution prepared by the Constitutional Adviser, it was provided that there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions "except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion." In a note appended thereto, the Constitutional Adviser observed that while for the most part the Governor would act on the advice of his Ministers, there were certain functions which even a responsible Head had to exercise in his discretion, namely, the choice of the Prime (Chief) Minister, the dissolution of the Legislature (in certain events), and so on.[28]

The Memorandum prepared by the Constitutional Adviser was discussed by the Provincial Constitution Committee, headed by Sardar Vallabhbhai Patel,and divergent views were expressed about the functions of the Government. The final proposals of the Committee were incorporated in its report:Memorandum on the Principles of a Model Provincial Constitution. The report envisages the conferment of "special re-

27. "Governor's Role in People's Raj" *Indian Express*, New Delhi, January 16, 1972.
28. *The Framing of India's Constitution, Select Documents*, op. cit., Vol. II, pp. 657-63.

sponsibility''[29] on the Governor besides discretionary powers. Sardar Patel,who presented the report to the Constituent Assembly on July 15,1947, assured the members that vesting the Governor with discretionary powers would in fact be no invasion on the ministerial responsibility as it was not the intention of the Committee to confer on the Governor any special powers in a situation involving a grave menace to the peace and tranquillity of a Province.''The Committee in settling this question'', he explained, ''intended to convey that the Governor shall have only the authority to report to the Union President about the grave situation arising in the Province (State) which would involve a great menace to the peace of the Province.'' As regards other discretionary powers, he asserted, that the power of summoning and dissolving the State Legislature ''is normal which is given in every constitution to a Governor, and therefore there is nothing special about it.''

As it emerged out of the Constituent Assembly the discretionary powers became exercisable not for certain purposes but in relation to certain specific functions. Adopting this plan, the Draft Constitution specified in various Articles spread over in different parts of the Draft certain matters in which the Governor would be required to act in his discretion.[30] This issue was considered by a Special Committee appointed for the purpose at its meeting held on April 11, 1948.It decided that in view of the change that the Governor should be nominated, instead of being elected, all references to exercise of functions by the Governor in his discretion should be omitted from the Draft Constitution. The proposal of the Special Committee was,however, not adopted and no amendment was suggested by the Drafting Committee to Article 143.

When Article 143 of the Draft Constitution was under consideration in the Constituent Assembly, H .V. Kamath moved an amendment seeking to delete all references to the exercise of discretionary powers by the Governor. But Ambedkar, contrary to his previous statement wherein he had categorically maintained that the Governor would always be required to act on ministerial advice, took a different stand this time. He maintained, ''The retention in, or vesting the Governor with, certain discretionary powers is in no sense contrary to, or in no sense a negation of responsible government.''[31] He extensively cited the examples of Canada and Australia and opposed Kamath's amendent. The Constituent Assembly supported Ambedkar and negatived the amendment.

The Constitution meant the Governor to act generally on ministerial advice but reserving to himself certain discretionary powers to be exercised by him untrammelled by ministerial advice. Ambedkar pointed out two types of duties a Governor was to perform. In the first type, he assigned him the duty to see ''whether and when he should exercise his pleasure against the Ministry'' that is, the Governor has to see that the Ministry continues to run the administration smoothly, efficiently and effectively. Secondly, it is the duty of a Governor to advise his Ministers,to warn them, to suggest an alternative and to ask the Government to reconsider the whole issue.''[32]But the ultimate decision should be that of the Council of Ministers. He should resist the advice tendered to him,but he must not persist. The decisions are taken by the Council of Ministers and it is the duty of the Chief Minister to communicate to the Governor all such decisions and proposals for legislation (Article 167). As a channel of contact and communication, he retains to himself the old dual role of the Governor and must act independently of his Council of Ministers on all such matters on which he is constitutionally entitled to receive instructions from the President.''The Governor'' explained K.M. Munshi, '' is the watchdog of constitutional propriety and the link which binds the State to the Centre thus securing the constitutional unity of India.''[33]

The office of the Governor was never meant to be an ornamental sinecure. He is not required to be an inert cypher and his ''character, calibre and experience must be of an order that enables him to discharge with skill and detach-

29. Namely, the prevention of any grave menace to the peace and tranquillity of the Province (State).
30. Appointment and dismissal of Ministers; summoning and dissolving of State Legislature; power to return to the Legislature for reconsideration of a Bill submitted to the Governor for his assent; issuing a proclamation of emergency suspending Ministers and assuming to himself executive functions of the State; appointment of the Chairman and members of the State Public by the Supreme Court.
31. *Constituent Assembly Debates,* Vol. VIII, pp. 489-502.
32. *Ibid.*, p. 546.
33. *Kulpati Letter No. 103 to Bharatiya Vidya Bhavan,* Bombay.

ment his dual responsibilities towards the Centre and towards the State executive of which he is the constitutional head."[34] There is no substance in the assertion of Mrs. Vijaya Lakshmi Pandit,who resigned from the Governorship of Maharashtra,that the office of the Governor should be abolished. She felt that the only thing that could influence a person to accept Governorship was the salary that the office carried. She also expressed her dissatisfaction with everything that the Governor and the *Raj Bhavan* stand for. Sometimes the criticism has been even indecorus. A Chief Minister once described the Governors as "nothing but expensive irritations." Commenting upon the observations of Mrs. Pandit, Sri Prakasa replied, "It would indeed by a pity if any office is maintained in a democracy that serves no useful purpose and it will be a greater pity if the only thing that can induce any person to accept the office is its salary."[35] Sri Prakasa held that "the only official emblem today of the unity of the country is the Governor."He had a feeling that "even the President is not so."[36]

The question of the abolition of the office of the Governor does not arise.[37] Even if it is abolished the day-to-day duties pertaining to the office of the head of State, that is, the dignified functions,will have to be performed by some one. In the beginning things went smoothly and relations between Governors and Chief Ministers were happy and cordial. The relations between the Governors and the Union authorities too extended to the Governors the regard and consideration consistent with the dignity of their office. The people at large gave them the same respect and courtesy as in the past. But soon they were relegated to a position derogatory to their power and position. When the "defeated Generals of a victorious army" were raised to the position of authority and dignity as a consolation of their electoral and other discomfiture, it was small wonder that such men were least concerned with their duties and obligations and readily surrendered themselves to their benefactors in New Delhi, Sri Prakasa wrote that Jawaharlal Nehru "not only dealt with the Chief Ministers over the heads of the Governors,but in some cases, to my personal knowledge, he gave authority to non-officials particularly ladies to do things in the Raj Bhavans, which were the Governor's residence and over which he was supposed to have full authority–without as much as consulting or even informing the Governor."[38]Sri Prakasa takes another instance. He says, "In the beginning the Central Ministers took the place of the old Executive Councillors of the Viceroy whose place in the warrant of precedence was below that of the Governors, The Prime Minister,however,decreed that the Governors,except in their own States,were lower than Central Cabinet Ministers.[39]

It is on record that many of the Chief Ministers even ignored the constitutional obligations under Article 167 to keep their Governors fully informed about the affairs of the State. Under the colour of "aid and advise",Chief Ministers arrogated to themselves the power to nominate Judges and Vice-Chancellors.[40] Complaints to Jawaharlal Nehru, on the occasion of the annual conference of the Governors and otherwise too,"about the high-handedness" of the Chief Ministers yielded no results. Every time,wrote K.M. Munshi, "the matter was mentioned at the Governors' conference, Jawaharlal Nehru laughed it out."Thus, in anguish, perhaps, Munshi described his job as Governor "to run a hotel and entertain guests."[41] The obvious result was that the Chief Ministers were, if not encouraged

34. *Report of the Study Team of the Administrative Reforms Commission on Centre-State Relationship,* Chap. XVIII, p. 272.
35. Sri Prakasa, *State Governors in India,* pp. 63-64.
36. "Governor's Lot Worsening : Reappraisal Overdue". *The Tribune,* Chandigarh, April 7, 1960.
37. At a symposium on the "Role and Position" of the Governors, organised by the Indian Paliamentary Association, Ramamurty, Satish Chandra Aggarwal and Bal Krishan Menon, all Members of Parliament, urged the abolition of the office. Memoranda were also submitted to the Sarkaria Commission, reviewing the Centre-State Relations, suggesting that the office of the Governor should be abolished. The most articulate was the Telugu Desam Party headed by Andhra Chief Minister N.T. Rama Rao.
38. "Governor's Lot Worsening : Reappraisal Overdue", *The Tribune,* Chandigarh, April 17, 1969.
39. *Ibid.*
40. Girja Shankar Bajpai, when Governor of Bombay, insisted that in his capacity as the Chancellor of Poona University he was not bound to accept the advice of his Ministry in nominating the members of the Senate. His contention was upheld by the Attorney- General. In the newly established Universities, as in the Punjabi University, Patiala, and Guru Nanak Dev University, Amritsar, the Vice Chancellors are appointed by the Chancellors on the express advice of the State Government. Similarly, Fellows are nominated by the Chancellor on the advice of the Government. Despite the clear provisions of the Punjabi University, Patiala, Act, Dr. Chenna Reddy, as a Chancellor of the University, did not accept the State Government's recommendation for the appointment of the Vice-Chancellor.
41. As cited by Pavate, D.C., *My Days as Governor,* p. 9.

over, they were certainly allowed to keep in direct touch with the Central authorities on the heads of the Governors.

The whole purpose of the Governorship was, thus, nullified and the intention of the Constitution-makers that the Governor was to be a link between the Union Government and the States was defeated and the main actors in this drama were Nehru and the Chief Ministers themselves who were active participants in the various committees of the Constituent Assembly where provisions of the Constitution were actually hammered. But with the coming into power of non-Congress coalitions consisting of eight or nine units even fourteen, professing different ideologies and pursuing different objectives, after the General Election in 1967 in a good many States, and more especially what happened in Bengal, it dawned upon the Union Government and others to properly assess and appreciate the role of the Governor in a federal polity as in India, and the peculiar and diverse conditions obtaining in every State essentially influenced by the people and their behaviour as electors and their representatives. One of the former Union Ministers who had then become Governor of a State exhorted other Governors "to recover their constitutional status as the Centre and the States were no longer controlled by the same party. Dharam Vira, the Mysore (Karnataka) Governor, also said that it was the responsibility of the Governor to see that the Government of the State "is run in accordance with the letter as well as with the spirit of the constitution. When political parties change on account of shifting loyalties it becomes very necessary that the Governor should be very vigilant in order to ensure that the government is run by a party or collection of parties which have the majority in their favour. He has to ensure that by taking shelter behind certain constitutional lacuna a minority government does not continue to function indefinitely. He has also to exercise considerable discretion at the time of the formation of a government. If there are multi-party groups coming together this discretion has to be exercised very carefully to ensure that the group or the party which wants to form the Government is really in a majority and can form a stable Government,"[42]

President V.V. Giri, in his concluding speech at the Governors' conference on November 21,1970, observed,"A Governor in spite of the difficult position in which he functions today and in spite of the fact that he may be liable to criticism, has to assert himself in upholding his constitutional duty."[43] He added,"While it is always open to Governor to seek the views of others whenever important issues come before him, it must definitely be understood that the ultimate decision is always entirely of the Governor".The recommendations of the Governors' Committee assigned a specific and powerful role to the Governor. The Committee noted that the choice of the Chief Minister and imposition of President's rule are not the only two situations where the Governor has to act independently of his Council of Ministers. Other occasions arise where the Governor"may find that to be faithful to the Constitution and the law and his oath of office, he has to take a particular decision independently."

For the functioning of the constitutional government in a State, the Governor provides the kingpin on which the entire machinery of the State must revolve. He summons the Legislature, prorogues and dissolves it. He chooses the Chief Minister and commissions him to form the Council of Ministers. Having installed the Government in office, he must continue to perform his legal,constitutional and conventional functions in order to enable the Government to be conducted properly and efficiently. It is his duty to see that the State Government functions in accordance with the Constitution and in conformity to the directions issued by the Union Government in pursuance of the provisions in Part XI, Part XVIII and other parts of the Constitution. In his capacity as a representative of the President,the Governor must diligently perform his dual role of sending a report to the President and if any serious emergency including the breakdown of the Constitution appeared and keep that report secret from his Council of Ministers. The Governor,thus,forms a stable link between the Union Government and the State Government and embodies in his office the machinery through which Government in a State may function in accordance with the Constitution.

In normal conditions, the Governor exercises his functions on the advice of his Council of Ministers. But consistent with the theory and practice of a responsible system of government,

42. "Interview with Dharam Vira", *The Hindustan Times*, October 11, 1969.
43. *The Sunday Tribune*, Chandigarh, November 22, 1970.

it does not mean immediate and automatic acceptance by him of such advice. In any relationship between the Governor and his Council of Ministers the process of mutual discussion is implicit and the Governor does not commit any impropriety if he states all his objections to any proposed course of action and asks the Council of Ministers to consider and even reconsider the matter, after obtaining any clarification he intends to seek. But in the last resort, he is bound to accept the Council of Ministers' final advice. In Bagehot's classical exposition of the role of the head of a State with a parliamentary system of government; the Governor has the duty to advise the Ministry as to what he considers the right course of action, to warn the Ministry whenever he thinks that it is taking a wrong step and to suggest to it to reconsider the proposed action in the light of his advice and warning.

Apart from being the symbol of the State, the Governor is the representative of the people. There should at least be one functionary in the State to whom all parties and interests can look up for disinterested advice, guidance and support. And no one can perform this function better than the Governor whose office, in some of its responsibilities, has been conceived and created for this purpose. Generally speaking, a Governor is an elderly person who has had experience of life in various spheres and departments of national activity; and ordinarily he is capable of giving advice. In India reverence to age is a part of her culture and, as such, the Governor can prove to be the best instrument of reconciling the differences between the Government and the Opposition on a good number of measures and thereby ensure political stability in the State. Kailash Nath Katju,who had been Governor of Bihar and Orissa States, succinctly said, ''Non-possession by you (Governors) of any political powers makes no difference at all. I think the Governor of a State under the Constitution can easily gain that respect and affection from the people under his care, if he himself leads a dedicated life.''[44] But it need be re-emphasised that if the Governor is to judiciously exercise his functions and duties, the President should appoint only those persons who are truly worthy of the office. Dharam Vira appropriately said that the ''time is past when the post of Governor was considered to be a sinecure for political pensioners,inconvenient politicians or aging civil servants. ''It is now obvious,'' he added, that a Governor "should be chosen with great care and should be people who in times of emergency, can deliver the goods.''[45]

But whatever care may be taken promoted politicians seldom forget their past prejudices,they often make political statements which are highly damaging to the office they hold. In the General Election of 1957 no party could secure majority in the Orissa State Assembly. The Jharkhand Party promised continuous support to the Congress Party and the Governor, Bhim Sain Sachar, called upon H.K. Mahatab to form the government. During the swearing in ceremony, the Governor was reported to have made a political speech. According to Surendranath Dwivedi, Chairman,Utkal Praja Socialist Party, the Governor had said that he would watch with ''personal interest'' the endeavours of the Chief Minister for securing a maximum of co-operation of others besides the present supporters.[46] The Governor of Orissa,Y.N. Sukhthenkar, in 1958, in his anxiety to keep the Congress Party in office kept the resignation of the Mahatab Ministry under consideration and subsequently allowed Dr. H.K. Mahatab to withdraw the resignation of his Ministry. The Governor had asked the leader of the Opposition to produce a list of members of the State Assembly who would support him. He, then,went to New Delhi to meet the President, the Prime Minister and the Home Minister to apprise them fully of and give them his views on the situation and, finally, on return from New Delhi rejected the claim of the leader of the Opposition that he commanded a majority on the ground that no names of his supporters had been supplied.[47] The ruling Legislative United Front Party in its meeting on May 21,1972 levelled serious charges against the Orissa Governor Joginder Singh. It was alleged that, among other things, the Governor had allowed Raj Bhavan to be used as a "centre of intrigue"against the coalition Government.[48] B.N.Joshi, General Secretary of the Rajasthan Congress Committee, criticised what he described as ''partisan statement'' made by the Governor, Raghukul Tilak, soon after he assumed office on May 12,1977. At a Press Con-

44. *The Tribune*, Chandigarh, October 22, 1971.
45. *The Illustrated Weekly of India*, Bombay, June 4, 1972.
46. *The Hindustan Times*, New Delhi, April 16, 1957.
47. *The Hindustan Times of India, New Delhi*, May 25, 1958.
48. *The Times of India*, Bombay, May 27, 1972.

ference he is reported to have said that he hoped the Janata Party would be able to overcome its problems of adjustment and that it would be a misfortune if the party broke up.[49] Referring to his appointment, Tilak said,he was to assume office on April 6, 1977, but he wanted time to consider whether he could serve the people by working for the (Janata) Party or as Governor.[50] The Governor also blamed civil servants for the "art of sycophancy"that some of them had developed in the past thirty years, of course his reference was to the Congress regime. When active politicians are elevated to this high office they make a mess of their position. The Uttar Pradesh Governor, C.P.N. Singh, who had been recalled after years of retirement,declared at a Press conference on May 18,1980 that he would not allow any"irresponsible combination of political groups" to form a Ministry in Uttar Pradesh in case no single party secured absolute majority in the ensuing Assembly elections. At the same time, he made it clear that he would try to ensure a stable Ministry through a "permutation of political parties which could form such a government."[51] There was a sharp reaction to the Governor's statement which the Opposition leaders described as "threat to the Opposition parties and indirect support to the Congress (I).[52]

To sum up, in theory, politics and office of the Governor of a State ought to be far apart. And yet the country has seen Governors playing politics with impunity. Ram Lal while in the Hyderabad Raj Bhavan being a classic example as also Jagmohan in Srinagar during his first tenure.[53] In their case,however,it was a game of politics at the behest of others. That saw a major indignant ground swell against the Congress (I) in both the States, Andhra Pradesh and Jammu and Kashmir. There are others who have been occupying Raj Bhavans and playing politics locally or back in their own perishes. Of late, one who made and played politics with least concern for propriety was the Rajasthan Governor Vasantrao Patil. He came down from Jaipur, and camping in his son's house in Bombay, demanded that the Maharashtra Chief Minister S.B.Chavan be dismissed. Patil had proclaimed to newsmen in Bombay that he did not see any incompatability between the position of a Governor and his recent role in Maharashtra."I am a Congress (I) man first,and Governor next," was his rationale.

Two results emerge from this analysis and both are closely interconnected. The integrity of State politics is vital for the political health of the country and a major corrective effort is necessary to remove the distortions that have overcome an office of great constitutional importance–the office of the Governor. During the past more than thirty years the office of the Governor has been misused and generally the Governors had been made handmaids not only of the Union Government,but also of the ruling party at the Centre as well. Not only the prestige of the office suffered a serious decline but politics in the States became yet more unstable and unprincipled. The conventions of the parliamentary system of government are much the same for the President as they are for the Governor and so, substantially, are constitutional provisions in so far as they deal with their position as head of a State in parliamentary democracy. Importantly, there is another aspect of the Governor's position and it is the federal aspect. His position is a dual one. He is appointed by the President on the advice of the Union Government and holds office at his pleasure. At the same time, he is the constitutional Head of a member-State of the federal Union–the eyes and ears or confidant of the Union Government and the conscience keeper of the State's Chief Minister at one and the same time.

It was abundantly made clear in the Constituent Assembly, particularly by T.T.Krishnamachari, that the Governor "who is to be nominated by the President,to be in any sense an agent of the Central Government." He emphasised this point and made it unambiguously clear "because such an idea finds no place in the scheme of Government we envisage for the future. "This has since been confirmed by the Report of the Committee of Governors (1971). The Committee emphatically held that the Governor as Head of the State has his functions as laid down in the Constitution itself and is in no sense an agent of the President, not even when the Government of a State has been taken over by the President under Article 356. But numerous instances are there that prove that most of the Governors have all these years, especially since

49. *The Times of India*, New Delhi, May 15, 1977.
50. *The Statesman*, New Delhi, May 14, 1977.
51. *The Times of India*, New Delhi, May 19, 1980.
52. *The Statesman*, New Delhi, May 20, 1980.
53. Jagmohan dismissed Dr. Farooq Abdullah and appointed G.M. Shah, who publicly declared in October 1987, that he was a "Pakistani," Chief Minister with a bunch of defectors from Farooq Abdullah's National Conference Party.

1969,been used as agents of the Centre and they had very often been used against non-Congress Governments in the States. Even Charan Singh tried to use this device in dismissing the non-Congress Ministries in the nine Northern States in 1977.

It is also hard to believe that the Constitution framers had even in mind to place the constitutional Head of the State in so delicate a position and leave him unprotected against arbitrary dismissal by the Centre as was done in the case of Prabhudas Patwari, Ragukul Tilak and T.N. Singh, who was "advised" to resign. Arbitrary dismissal really makes a mockery of federalism as the Governor is the Head of a member-State. Federalism is based on equality of status and co-ordinate powers bet- ween the two sets of government.

It is,therefore, necessary to correct the present imbalance in regard to the Governor's office by giving him greater independence *vis-a-vis* the Centre. And the crux of the problem is that there is something fundamentally wrong with the procedure of appointment of Governors. In view of the statement made by Giani Zail Singh, the then Home Minister, in March 1980, that it is "proper for all political appointees including Governors to resign immediately after a change of government at the Centre; at least democratic traditions demand it, it is significantly necessary that the Governor's appointment should not be left to the caprice of the Union Home Ministry. Nor should it be left to the predilections of the State Chief Minister. In the Lal Bahadur Shastri Memorial Lectures at Poona University on "Conflict between the Centre and States", K. Subba Rao, former Chief Justice of India, suggested that the Governors "should be appointed by the President in consultation with Ministers but on the advice of a high-powered body...and he should be removable only on basis of a verdict of misconduct pronounced by the Supreme Court. A Governor so removed should not be eligible for any Central, State Government position." It is a bit cumbrous and seems radical reform. Nath Pai, a member of Parliament, suggested that the appointment of a Governor should be subject to the ratification by Parliament. The proposal merited serious consideration, but the Government was in no mood to accept it. An innocuous proposal is to give the Governor a fixed term in office and make him removable only for proven misconduct. This simple reform alone will make the Governor far more independent than he is today. It will also enable him to be more candid in his dealings with the Chief Minister and pointing out the lapses in the State administration.

THE COUNCIL OF MINISTERS

The Council of Ministers

The Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except in so far as he is by or under the Constitution required to act in his discretion. The Governor appoints the Chief Minister and other Ministers are appointed by the Governor on the advice of the Chief Minister.[54] While the Council of Ministers is collectively responsible to the Legislative Assembly of the State, Ministers hold office during the pleasure of the Governor. There is no provision in the Constitution for individual responsibility of the Ministers to the Legislative Assembly. Individual responsibility is covered by the provision that Ministers hold office during the pleasure of the Governor and the pleasure of the Governor really means the pleasure of the Chief Minister. When a Minister does not agree with the policy of the Council of Ministers, or he does anything else which compromises the solidarity and stability of the Government, constitutional propriety as well as a duty demand that he should immediately resign when a hint is given by the Chief Minister. If he does not resign, then, it is the right of the Chief Minister to advise the Governor for his dismissal. Ambedkar emphasised this point in the Constituent Assembly.

Joint responsibility is the first necessity of a responsible government and the most essential fact for a successful democratic administration. The Ministry is one and indivisible and its solidarity demands a "common front" both within and outside the Legislature. A Minister differing from the policy determined by the Cabinet must resign from the Government. If he does not resign, then, the decision of the Cabinet is as much his decision as that of his colleagues even if he

54. Governor Pavate wrote, "The usual procedure is that a Chief Minister considers certain persons for appointment as Ministers and advises the Governor to appoint them. The Governor considers the names carefully before doing so." Without disclosing the name, Prakash Singh Badal expressed a desire to the Governor to expand his Council of Ministers by including a Jana Sangh member of the Assembly who was reported to have agreed to defect if he was sworn in as a Minister immediately. The Governor refused to make the appointment under the circumstances. Pavate, D.C., *My Days As Governor*, p. 162.

protested against it in the Cabinet. It means that the Minister cannot rebut the criticism of his opponents on the plea that he did not agree to the decision when the matter was being discussed in the Cabinet. And for that matter, all Cabinet secrets must be most scrupulously guarded. This strict discipline in the responsible system of government rigidly insists if mature, rational and independent contribution to the policy-making is desired from men who are engaged in a common cause and who come together for the purpose of reaching an agreement. "It is, however, not unusual in our country," said K.M. Munshi,"to find a differing Minister's views appearing in the daily papers on the morning after a Cabinet meeting."[55]In the states differences among the Ministers and among some Ministers and the Chief Minister are more frequent and pronounced than at the Centre. Factions among state parliamentary parties have been a rule rather than an exception. Intrigues against other colleagues and the Chief Minister have followed factious struggle. In almost all the states these have been furthered by the rift between the head of the political party in the state and the Chief Minister. When Ministers contradict each other, cracks appear in the government fabric which are injurious and possibly fatal to good government. When intrigues and factious struggle amongst the Ministers enter the body politic that is the end of responsible government and this is the hard lesson Indians have learnt by years of experience.[56]

The number of the Ministers is not fixed. It is for the Chief Minister to determine the size of the Council of Ministers and he does so as the requirements of the occasion may demand. The only constitutional requirement is that in the states of Bihar, Madhya Pradesh, and Orissa the Council of Ministers must have a Minister in charge of Tribal Welfare and the same Minister may also be entrusted with the welfare of the Scheduled Castes and Backward Classes in the state.

It has often been complained that the Councils of Ministers in the states are unduly large and it heavily burdens their exchequers. Prior to 1962, this criticism was untenable. Their number was nowhere larger than the actual needs of a good and efficient administration. The necessities of a Welfare State incredibly expand the functions of Government and correspondingly the number of the Departments of the government. Responsible government demands that all Departments must be presided over by a political chief to see the proper implementation of policy and be answerable to the Legislature for its work. But not in the manner which Coalition Governments, after 1967 General Election, had done in a good number of the states. In a new and small state like Haryana, for instance, more or less every legislator was an aspirant for ministership and he defected from his parent party to be sworn on the same day. In fact, ministership was a bait to defect and crossing of floor had become a normal feature of the political life of the state raising the total number of the Council of Ministers to a staggering figure of 34 of a total State Assembly membership of 81. Lachhaman Singh Gill's minority Government in Punjab consisted of seven Cabinet Ministers,three Ministers of State and three Deputy Ministes. Three more Ministers were added after about a week of its existence, making a total of sixteen Ministers out of a total 19 MLAs forming the Janata Front. The Janata Party had issued a directive that the strength of the Ministry should not exceed ten per cent of the total membership of the State Assembly. But in almost all the states where the Janata Party formed Governments in North India the norm was violated and with the connivance of the Central Parliamentary Party Sheikh Mohammed Abdullah began with seven-member Ministry on July 9,1977 and within four days increased the number to twenty-three, the largest in the state history. The total number of members of the National Conference in the Assembly was 47. But Andhra Pradesh established a record when Anjiah constituted a 61-member Council of Ministers. There were loud protests and on the intervention of Congress (I) President the number was reduced to 45 early in February

55. *Kulpati's Letter* No. 103 to *Bharatiya Vidya Bhavan*, Bombay, *op. citd.*

56. One of the Ministers of State, Tarlochan Singh Ryasti, in the Badal Ministry in Punjab, while analysing the reasons for reverses of the Akali Dal in the 1972 mid-term Parliamentary poll, in a pamphlet issued by him, openly demanded an inquiry into the allegations of corruption against his colleagues in the Council of Ministers and also demanded a reduction in the size of the Ministry which was too big for a small State like Punjab. D. C. Pavate, who was then Governor, said that the Badal Ministry consisted of 27 members out of a total strength of 58 Akali legislators and sharp differences arose among them on the distribution of portfolios. Discontentment among a few more Akali legislators spread who were not included in the Ministry. "An impression had been created that a number of Akali MLAs would leave the Akali Dal and form a coalition government with the Congress (R) or form a government with the support of Congress." Pavate D.C., *My Days As Governor*, p.189.

1981. Bihar at present takes the lead and Haryana is a close second. Prime Minister P.V. Narsimha Rao expressed himself against "oversized" Cabinets both at the Centre and in states and multiplicity of Corporations to accommodate a large number of persons.[57] But Kerala Chief Minister, K. Karunakaran, ruled out cuts in his Ministry. He felt that it was unworkable in Kerala which has multiparty government.[58] A similar view was expressed by the Bihar Chief Minister.

The Constitution nowhere mentiones the word Cabinet. It provides for a Council of Ministers both at the Centre and in states. The Cabinet was an extra-constitutional growth at both the levels. The Councils of Ministers formed at the Centre since 1950, made a definite distinction between "Ministers of Cabinet"and "Ministers of State". No such distinction was made in the states until after the 1962 General Election. Now this categorisation of Ministers of different status is complete in all states. Even Deputy Chief Ministers have been appointed in some of the states. Uttar Pradesh had two in 1979 just as there were two in the Union Government. But it is the Cabinet Ministers alone who meet in a body, deliberate and formulate policy and constitute a Cabinet. The Cabinet Ministers preside over the different Departments of Government and see that the policy collectively determined by the Cabinet is properly implemented. If a Minister of State holds an independent charge of a Department, he attends the meetings of the Cabinet and participates in its deliberations when problems relating to his Department are under discussion. Deputy Ministers and Parliamentary Secretaries have no berth in the Cabinet. Their task is to assist the Ministers, to whom they are attached, in their administrative and Parliamentary duties. The Parliamentary Secretaries are neither Ministers nor do they exercise any powers. They are assigned duties as the Minister in charge of the Department to which they are attached may consider necessary. But all of them, who make the Council of Ministers are members of the State Legislature, and if they were not at the time of their appointment they must get themselves elected within a period of six months,belong to the majority party or a combination of parties commanding a majority or support of the majority of members, and are collectively responsible to it.

57. *The Hindustan Times*, New Delhi, January 19, 1972.
58. *The Times of India*, New Delhi, January 20, 1972.

Dismissal of Ministry

Dismissal of Ministry by the Head of the state is not an accepted axiom of parliamentary system of government under normal conditions. But if the Governor is convinced that the Ministry was indulging in political manoeuvring to keep itself in office, and, consequently, jeopardising the interests of the state, or that it was engaged in activities which were likely to endanger national security or unity, he can in his discretion dismiss such a Ministry. B.R. Ambedkar's clarification on this issue to the Constituent Assembly left no room for controversy. Speaking on June 2,1949, he told the Assembly Members, "My submission is that although the Governor has no function still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry..."

After careful consideration of the constitutional position, the Kerala Enquiry Committee of the Indian Commission of Jurists, consisting of N.H. Bhagwati, M.P.Amin, former Advocate-General of Bombay, and N.K. Nambiar, a constitutional lawyer, opined, "Where, therefore, the Governor is satisfied that the Ministerial orders are in violation of the law, it is not only his right, but his duty as guardian of the Constitution, which he has sworn to preserve, protect and defend, to correct and rectify, and, in the last resort, to dismiss the Ministry, if recalcitrant. A Governor who fails in his duty, must be deemed to be privy to the violation of the law; and his position will become wholly untenable. It may be that on the dismissal of Ministry, the Governor might be unable to find an alternative Ministry commanding a majority in the Legislature. But, in that event, he has the right to order a dissolution of the Legislative Assembly and direct fresh elections."

The opinion expressed on November 11,1967 by a spokesman on behalf of the Union Government was that when in his judgment, the Governor is duly satisfied that the Chief Minister no longer commands support of the majority of Assembly members, he would be justified in the exercise of his discretionary functions to dismiss the Council of Ministers. In such a case, there can

be no question of his acting on the advice of his Council of Ministers. This action, he elaborated, can be taken on the basis of any material or information available to him, even, if such material or information might be extraneous to the proceedings of the Legislative Assembly. The Home Minister asserted in the Council of States (Rajya Sabha) that the discretion of a Governor was not justiciable.[59] The Union Law Minister endorsed in the House of the People (Lok Sabha) the opinion expressed on behalf of the Home Ministry and opined that in dismissing the Ajoy Kumar Mukherjee Ministry in West Bengal, the Governor had acted "in the interest of the country and the Constitution."[60]

The Presiding Officers of the Legislative bodies of India, assembled in a conference on April 6-7, 1968 at New Delhi, adopted a resolution recommending to the Government of India to take urgent and suitable steps to evolve conventions in regard to the powers of the Governors to summon or prorogue the Legislatures and dismiss Ministers. By implication the resolution had disapproved of the action of West Bengal Governor in assuming to himself the power to judge the support of the Ministry. The resolution stated that the question whether a Chief Minister has lost the confidence of the Assembly shall at all time be decided into the Assembly.[61] The resolution of the Conference of the Presiding Officers runs contrary to the stand taken by the Home Ministry and the Law Minister himself that a Chief Minister holds office at the pleasure of the Governor. The Punjab Governor D.C. Pavate wrote to Chief Minister Gurnam Singh, who had earlier been defeated on the floor of the Assembly, asking him to resign at once otherwise "I would be required to dismiss him."[62]

But the constitutional competence of a Governor's action in dismissing an elected government is not open to question today. Both the West Bengal High Court and, later, the Supreme Court-which dealt with similar questions arising from the Governor-Speaker controversy in Punjab-clearly upheld the Governor's action in two situations as constitutionally competent. In *The State of Punjab* vs. *Baldev Prakash and Satpal Dang* the Supreme Court held that the Governor's powers being untrammelled by the Constitution and an emergency having arisen the action (of the Governor) was perfectly understandable" and consequently. the resummoning of the Legislature by the Governor was a step in the right direction. The Court upheld the constitutional validity of the two Appropriation Acts of the Punjab which the Punjab and Haryana High Court had earlier struck down. In another case of the Probationers in the Punjab Judicial Service, Justice Bhagwati and Iyer held. "In all his (Governor's) constitutional functions, it is the Ministers who act. Only in the narrow area specifically marked out for discretionary exercise by the Constitution, he (Governor) is untrammelled by the State Minister's acts and advice. Of course, a limited free-wheeling is available regarding choice of the Chief Minister and the dismissal of the ministry as in the English practice adapted to Indian constitution."

Chief Minister

The practices of the parliamentary system of Government and those that govern the office of the Prime Minister in Britain have been followed to a considerable extent in the working of the Union Government in India and the position of the Indian Prime Minister,like his counterpart in the 10 Downing Street,is unchallengeable which no other colleague of his can rival. But the Chief Ministesr in majority of the States do not enjoy that unique position of exceptional and peculiar authority. Members of the majority parties in the State Legislatures and Ministers themselves have not exhibited sufficient discipline of solidarity and team work. Personal differences, intra-party conflicts, clamour for offices, favouritism and even casteism, regionalism and communalism are so prominently in operation that the career of a Ministry is always in jeopardy. So long as one single party reigned supreme in nearly all the States major splits between the groups within the party were avoided by the stern hand of the Congress Parliamentary Board. But after the 1967 General Election,when the stronghold of the Congress loosened,the splits hitherto curbed violently reappeared. In fact,there was an open revolt. Even ambitious veterans either left the Congress or joined hands with other groups with whom they had nothing in common except the desire to oust the Congress from power. The situation did not appreciably improve when the

59. As reported in *Indian Express,* New Delhi, November 21, 1967.
60. Speech in the House of the People, December 4, 1967, *The Times of India,* New Delhi December 5, 1967.
61. As reported in the *Statesman,* New Delhi, April 8, 1968.
62. Pavate, D.C. *My Days As Governor,* p. 131.

Janata Party came into power in 1977. In the States of Bihar,Madhya Pradesh and Uttar Pradesh, and Haryana there was an open revolt on the selection of party leaders in the State Assemblies and even the Central leadership was accused of partisanship and favouritism and in most of the cases it was true.

One of the main factors responsible for the disintegration of the Congress was the mighty hand of the Central Parliamentary Board which always dictated and imposed its decisions on the State Legislature Party. The Board seldom allowed the Party to elect its leader to become a Chief Minister and select his colleagues in the Council of Ministers. The Chief Ministers were very often directed in the replacement of Ministers and even the Chief Ministers themselves. For instance, Bhim Sain Sachar in the Punjab was replaced by Pratap Singh Kairon. Ram Kishen was not the State Legislature Party's choice and he himself proclaimed *ad nauseam* that he was the "driver" of the High Command. The practices established by the Congress neither helped to uphold the authority of the Chief Minister nor sustained collective responsibility. In reality it helped to aggravate group manipulation and created conditions of schism in the Council of Ministers thereby utterly damaging the authority and prestige of the office of the Chief Minister. A party must freely elect its own leader and the leader should be free in shaping his Government according to his own views of what is likely to work best. A leader imposed from above cannot command the spontaneous esteem and unequivocal loyalty of his colleagues,and his colleagues in the Council of Ministers should be only those persons who owe to their chief personal loyalty as well as party allegiance; the *sine qua non* of team work. An imposed leader from above meets the fate of Kedar Pandey and Abdul Ghafoor in Bihar, Ghanshyam Oza and Chimanbhai Patel in Gujarat. H.N. Bahuguna in Uttar Pradesh, S.B.Chavan in Maharashtra and scores of others like them.

It has now become almost a principle that the Chief Minister will be a nominee of the High Command which in terms of Congress (I) meant its President, Mrs. Gandhi and Rajiv Gandhi.The State legislators are never allowed to make their choice by a free and secret ballot. Either one is selected or some sort of nebulous consensus is sought to be brought about at New Delhi. After 1980 elections to the State Assemblies it was found that none of the members of the majority party in most of the States could command sufficient support to hold the office of the Chief Minister and, consequently, persons elected to Parliament were sent to the States to pilot their Governments. This happened in Rajasthan, Uttar Pradesh,Orissa, Maharashtra and subsequently in Andhra Pradesh. And the test of selection was personal loyalty to Mrs. Gandhi, which was really unfortunate as it seriously undermined the dignity of the office of the Chief Minister. But the Congress(I) Party had to pay price for this indiscreet policy in the January 1983 Assembly elections in the States of Andhra Pradesh and Karnataka. The Congress(I) Party since then has retreated from this practice and the State Legislature Party elects its own leader. But the factionridden Congress (I) has not a consensus candidate with-the result that the Central Parliamentary Board appoints its observers, who carry the mind of the Congress President who is also the Prime Minister, to sort out the differences and reach consensus. This is, in fact, a veiled imposition of a leader as one will not like to go on the wrong side of the Party President and lose the grace of the Prime Minister.

There is another tendency that has prominently emerged as a result of Centre's tightened control. In spite of the talk of decentralization of power,there has been an increasing tendency to concentrate power and decision-making. After Independence the States were headed by stalwarts like B.G.Kher, B.C.Roy, K.Kamaraj, G.B.Pant who were held in high esteem by the Prime Minister. Instead of their having to run to New Delhi for seeking advice and approval,they only came when invited for consultation on any key national and international issues. Jawaharlal Nehru respected the federal principle and he allowed the States freewheeling within their own area of jurisdiction. Latterly,this quality of the Constitution has been diluted in various overt and covert ways. The Chief Ministers retain their camp offices at the State Capitals and they rush to New Delhi for advice and consultation on trivial matters. All Congress (I) Chief Ministers have done well to note, that regional satraps who try to survive without the Party President cum Prime Minister's blessings will speedily be cut down to size.

Duties of the Chief Minister

The Constitution prescribes that it shall be the duty of the Chief Minister:

(a) to communicate to the Governor all de-

cisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires to submit for the consideration of the Council of Ministers any matters on which decision has been taken by a Minister but which has not been considered by the Council.

But once the matter so referred is approved by the Council of Ministers it becomes binding on the Governor. The Constitution nowhere empowers the Governor to re-open any decision already taken by the Council of Ministers. It is only the decision of an individual Minister that can be referred to the Consideration of the Council of Ministers. It has been asserted that the provision empowering the Governor to direct the Chief Minister to submit for the consideration of the Council of Ministers any matter on which decision has been taken by a Minister is not in accord with the principle of collective responsibility. But it is not exactly so. So long as one single Party commands a clear majority in the State Legislature and the Council of Ministers is a homogeneous team, the possibility of a Minister taking a decision on any matter of policy independently of the Council of Minister or taking an important matter upon which there is no Cabinet decision or his acting contrary to the decision already taken by the Cabinet, is very rare. But when it is a coalition government, in which many groups combine without having any common basis of policy, such an eventuality may arise, as it did happen in Uttar Pradesh,Madhya Pradesh and West Bangal, when Ministers took action on matters upon which there were no Cabinet decisions and even made declaration of policies which happened to be contrary to the decisions of the Cabinet itself. It is only here that the intervention of the Governor is needed to safeguard the principle of collective responsibility enshrined in the Constitution,that is,to direct the Chief Minister to submit for the consideration of the Council of Ministers any matter on which decision has been taken by a Minister. Dealing with this aspect, K.M. Munshi said in the Constituent Assembly, "there is no harm,but there is great advantage if the Governor exercises his influence over his Cabinet. As I have said we have single parties in the provinces now but a time might come when there will be many parties, when the Premier (Chief Minister) might fail to bring about compromise between the parties and harmonious policies during a crisis. At that time the value of the Governor would be immense and from this point of view I submit, that the powers that are given here are legitimate powers given to a constitutional Head and they are essential for working out a smooth democracy and they will be most beneficial to the Ministers themselves because then they will be able to get confidential information and advice from a person who has completely identified himself with them and get accessible to other parties."[63]

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63. *Constituent Assembly Debates,* Vol. VII, p. 130.*i*

CHAPTER XIV

The State Legislature

The State Legislature

The Legislature of a State consists of the Governor and one House or, as the case may be,two Houses. Bihar, Jammu and Kashmir, Karnataka, Maharashtra and Uttar Pradesh have two Houses whereas the remaining twenty States are unicameral."[1] Parliament can, by law, provide for the abolition of an existing Legislative Council or for the initial creation of Council if the proposal is supported by a resolution of the Legislative Assembly (Vidhan Sabha) passed by a majority of the total membership and by two-thirds majority of those present and voting. The procedure regarding the creation or abolition of a Legislative Council (Vidhan Parishad) is similar to the one provided in the Government of India Act,1935. Ambedkar,while explaining the reasons for adopting this procedure, said in the Constituent Assembly "The provision of this Article follows very closely the provision contained in the Government of India Act,1935, Section 60 for the creation of the Legislative Council and Section 308 which provides for the abolition. The procedure adopted here for the creation and abolition is that the matter is really left with the Lower Chamber, which by a resolution may recommend either of the two courses that it may decide upon. In order to facilitate any change made either in the abolition of the Second Chamber or in the creation of a Second Chamber provision is made that such a law shall not be deemed to be an amendment of the Constitution, in order to obviate the difficult procedure which has been provided in the Draft Constitution for the amendment of the Constitution."[2]

Bicameral Legislature

The Memorandum on the Principles of a Model Provincial Constitution circulated on May 30,1947,by the Constitutional Adviser provided for a single chamber, called the Legislative Assembly. The Note added to the Memorandum pointed out that under the Government of India Act, 1935,the Provinces of Assam, West Bengal, Bihar, Bombay, Madras and the United Provinces had bicameral legislatures and whether any State was to have a bicameral legislature or not would probably have to be left to decision of the representatives of that State in the Constituent Assembly. In case any State decided to have two chambers,the second chamber would be called the Legislative Council.

The Provincial Constitution Committee decided that as a general rule,there should be only a single chamber legislature in all the States. But the Committee agreed that two chamber legislatures might be constituted in States where special circumstances existed. In a Note added to the Report, the Committee proposed that the members representing the different States in the Constituent Assembly should meet separately and come to a final decision whether to have a second chamber for their State or not. A Sub-Committee consisting of B.G. Kher, Pattabhi Sitaramayya, P. Subbarayan and Kailash Nath Katju was constituted to determine the composition and mode of representation of members of the Legislative Council in case a State decided to have a second chamber. The Sub-Committee recommended that the membership of the second chamber, if decided to have one, should not be more than a quarter of the total membership of the Legislative Assembly, and that there should be,within certain limits,functional representation on the lines of the Constitution of Ireland. It was, accordingly, recommended that the composition of the Legislative Council should be one-half to be elected on functional representation on the Irish pattern; one-third to be elected by the Legislative Assembly of the State through the method of proportional representation, and one-sixth to be nomi-

1. Although the Constitution (Seventh Amendment) Act, 1956, provides for the creation of a Legislative Council in Madhya Pradesh, it had not yet been constituted. But it is included in Article 168 which states that the Legislature in Madhya Pradesh shall consist of the Governor and two Houses.
2. *Constituent Assembly Debates,* Vol. IV, p. 14.

nated by the Governor on the advice of his Ministers.

These proposals of the Sub-Committee were accepted by the Provincial Constitution Committee. The Constituent Assembly discussed the recommendations on July 18 and 21, 1947 and were adopted with some amendments. The Constitution, thus, provides a divergent practice of bicameral legislatures in the States. It also provides for the abolition of the Council in a State which has one, or for its creation in the State without one. But it does not involve amendment of the Constitution. The procedure, provided in Article 169, prescribes: on a resolution passed by a majority of the total membership of the Legislative Assembly and by two-thirds majority of the members present and voting either for the creation or abolition of a Legislative Council, Parliament enacts a law in deference to such a resolution.

Legislative Council had a chequered career in the States where they were established. Originally, Bihar, Bombay, Madras, Punjab, Uttar Pradesh and West Bengal in Part A States and Mysore among Part B States had bicameral Legislatures. Of the fourteen reorganised States in 1956 ten were to have bicameral Legislatures : Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh, West Bengal and Jammu and Kasmir. With the creation of Maharashtra and Gujarat States in 1960, Gujarat opted for a single chamber and so did Haryana on the division of Punjab in 1966. In Punjab and West Bengal the Legislative Councils were abolished in 1969. The Uttar Pradesh Assembly also voted for the abolition of the Council on April 29,1970. But on May 4, just after three days, Speaker A.G. Kher confirmed in the State Assembly that a formal resolution urging revocation of the abolition of the Council had been received by him and Uttar Pradesh bicameral legislature continued. In Bihar the Assembly passed in its 1970 Budget Session a resolution recommending the abolition of the Council. But in December the Assembly adopted by 186 to 55 votes, a non-official resolution seeking postponement of the abolition Bill till May 1974. No action has since been taken and Bihar too continues with a second chamber. Andhra Pradesh Legislative Assembly, immediately after Telugu Desam assumed office in Junuary 1983, passed with overwhelming majority a resolution to abolish the Legislative Council. The Union Government declined to take action on the resolution on the ground that since Telugu Desam had only 6 members in the 90-member Legislative Council, it had no right to demand its abolition; not a valid argument as it contravened the provision of Article 169 of the Constitution. The Union Government ultimately succumbed when the Andhra Pradesh Assembly passed the resolution for the second time and the Legislative Council was thus abolished in that State. Tamil Nadu soon followed Andhra Pradesh and now only five States of the Union of India have bicameral legislatures.

LEGISLATIVE COUNCILS

Composition and Organisation

The Legislative Council of a State comprises not more than one- third of the total number of members in the Legislative Assembly of the State and in no case less than 40 members.[3] About one-third of the members of the Council are elected by members of the Legislative Assembly from amongst persons who are not its members; one-third by electorates consisting of members of municipalities, district boards and other local authorities in the State which Parliament may by law specify; one-twelfth by registered graduates of more than three years' standing; and one-twelfth by registered teachers in educational institutions not lower in standard than secondary schools. The remaining members are nominated by the Governor from among persons who have distinguished themeselves in the field of literature, science, art, co-operative movement and social service. The system of election prescribed for all such categories is that of proportional representation by means of the single transferable vote. The Councils are not subject to dissolution but one-third of their members retire every second year. A member who remains absent for a period of sixty days from all its meetings without permission vacates his seat.

The Council along with the Assembly must be summoned at least twice a year and not more than six months would intervene between the last sitting and the first sitting in the next session. The Governor prorogues the Council. He may address the Council separately or both the Houses together. The Governor may send messages to the Council in respect of a Bill pending before it, suggesting any changes of modifications which he deems necessary and such messages must be

3. The Legislative Council of Jammu and Kashmir has only 36 members vide Section 50 of the Constitution of Jammu and Kashmir.

considered at the earliest possible opportunity. Every Minister and the Advocate General of a State has the right to speak in, and otherwise to take part in the proceedings of both Houses and any Committee of the Legislature of which he may be named a member. But a Minister is entitled to vote only in that Houses of which he is a member.

The Council chooses from amongst its members a Chairman and a Deputy Chairman. Both vacate their offices if they cease to be members of the Council or resign form its membership. They can also be removed by a resolution of the members of the Council, provided fourteen days' notice to move such resolution of removal had been given. When the resolution for removal is under discussion against the Chairman or the Deputy Chairman, the concerned person shall not preside at the sitting of the Council, although he may be present at such a sitting and has the right to speak in, and otherwise to take part in the proceedings of the Council. He shall be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings. In case of equality of votes he does not exercise a casting vote to which he is otherwise entitled under Article 189.

The Chairman presides at all sittings of the Council and in his absence the Deputy Chairman. During the absence of both the Chairman and the Deputy Chairman, such other person as may be determined by the rules of procedure of the Council shall preside; or if no such person is present, such other person as may be determined by the Council shall act as Chairman. While the office of the Chairman is vacant, the duties of his office are performed by the Deputy Chairman. If the office of the Deputy Chairman is also vacant, such member of the Council as the Governor may appoint shall perform all such duties connected with the office of the Chairman.

Functions of the Council

A Bill other than a Money Bill or Finance Bill may originate in either House of the legislature, if it is bicameral. A Bill is not deemed to have been passed by the State Legislature unless it has been agreed to by both the Houses. If the Council does not pass a Bill, or it is passed by the Council with amendments to which the Assembly does not agree or three months elapse from the date on which the Bill is laid before the Council, it again goes to the Assembly. The Assembly may pass the Bill with or without amendments suggested by the Council and then transmit it to the Council for its consideration. If the Council again rejects the Bill, or it is not passed within one month from the date on which the Bill is laid before the Council or is passed with amendments to which the Assembly does not agree, the Bill is deemed to have been passed by the two Houses in the form in which it was passed by the Assembly for the second time. The Legislative Council cannot kill the Bill. It can only delay it for a period of four months.

The functions of a Legislative Council in respect of Money Bills are similar to those of the Council of States (Rajya Sabha). No Money Bill can be introduced in a Legislative Council. After a Money Bill has been passed by the Legislative Assembly, it is transmitted to the Council for its recommendations. The Council is required to return the Bill with its recommendation within fourteen days. The Assembly may either accept or reject such recommendations. If it rejects them, the Bill is deemed to have been passed by both the Houses in the form in which it was passed by the Legislative Assembly. If the Bill is not returned within fourteen days, it is deemed to have been passed by both the Houses at the expiration of the said period in the form in which it was passed by the Assembly.

The Legislative Council has, thus, neither the initiative nor any effective voice in respect of money or financial matters. It can only make recommendations within the specified period of fourteen days and it is for the Legislative Assembly either to accept or reject such recommendations. If the Council fails to make any recommendation within fourteen days after receiving the Bill, it is deemed to have been passed by both the Houses of the Legislature in the form in which it was passed by the Legislative Assembly. The real power in financial and money matters belongs to the Assembly.

The Council does not control the Ministry. The Constitution specifically provides that the Council of Ministers is collectively responsible to the Legislative Assembly. No adverse vote of the Council can bring the Ministry to crisis. The members can, however, put questions and ask supplementaries on matters connected with public administration, move, discuss and pass resolutions on any matter of public importance and relating to the administration of the State. Rules of Procedure of the Legislative Council also provide for Calling Attention Notice.

Utility of the Councils

Whatever reasons might have weighed with the Provincial Constitution Committee that the members of the Constituent Assembly representing different Provinces (States)should meet separately and decide whether to have a second chamber or not, it is, undoubtedly, clear that the Constitution-makers were themselves uncertain of the utility of the Legislative Councils. By providing for their abolition by an ordinary legislative process the Councils were given only a very subordinate and tentative place in scheme of the State Government. The Legislative Councils are not only second chambers, wherever they exist, but also secondary chambers. They have practically no control over Money Bills. A Money Bill must originate in the Legislative Assembly and having passed thereform, it is simply transmitted to the Council for its recommendations. The Council must return the Bill to the Assembly within fourteen days of its receipt either with or without its recommendations. But the recommendations are not binding on the Assembly. If the Assembly rejects these recommendations or the Council does not make any recommendation within the specified period of fourteen days, the Bill becomes law on receiving the assent of the Governor. All that the Council can do is to delay a Money Bill for fourteen days. Nor are its powers effective in respect of non-Money Bills. The Council can only delay the passage of a non-Money Bill for a period of four months. The Constitution does not even make a provision for joint sittings in case of disagreement between the two Houses. The will of the Assembly must ultimately prevail.

Despite all this,there are many staunch advocates of bicameral Legislatures in the States.[4] They do not regard second chamber a futile institution and argue for it as a democratic necessity; a check on hasty and ill-considered legislation. Legislative Councils,they assert, adequately serve this purpose and from their performance in the States in which they exist their role as revisory chambers is fully established. The amendments proposed to the Bills by the Council have generally been accepted by the Assemblies and the speeches of elder statesmen and veteran politicians, who compose the membership of the Councils, are heard with keen attention and respect. In India respect to age, experience and maturer judgment is a heritage and their impact on public opinion is immense. Presiding officers of the Legislative Councils,who met at Patna in August, 1970, demanded the retention or restoration of Legislative Councils and described the popular campaign to abolish them as "a part of conspiracy to murder democracy in India." They even sought amendment of the Constitution to provide for Councils in the States where they did not exist. The Punjab Legislative Assembly passed a resolution on March 29, 1976, recommending to Parliament that it should provide for the creation of a Legislative Council, which was earlier abolished in 1969, in the State.[5] Moving the resolution the Minister for Parliamentary Affairs, Umrao Singh, said that in all democratic countries there were two Chambers, one which was chosen on the basis of adult franchise through direct election while the other had members representing special interests and minorities, such as, graduates, intellectuals and teachers. The Upper House, he maintained, was not for persons or parties but for giving representation to wider interests.

The atmosphere in the Councils, it is argued, is serene and is particularly suited for initiating non-controversial legislation. Passions do not run high there and political antagonism does not assume so much bitterness as in the Assembly, because the Council cannot bring about a crisis in the Government. The result is a high order of debates and full consideration of the pros and cons of the legislation under discussion or matter under review. In financial matters, too, Legislative Councils have their own contribution to make which is by no means negligible. The Constitution provides that the Annual Budget is to be laid before both the Houses of the Legislature and discussed. The report of the Comptroller and Auditor-General is also required to be laid before both Houses. The Council is also represented in the Public Accounts Committee.

But the critics of the second chambers in the States are no less vehement. They assert that the Legislative Councils are composed of diverse elements, differently elected and include nominated members too. A chamber so heterogeneously constituted can neither properly serve the purpose of a revising chamber nor can it act as an effective brake against hasty and ill considered

4. Sir Prakasa, "Abolition of Upper Houses : The Other Side of Issue", *The Tribune*, Chandigarh, June 6, 1969.
5. The resolution was passed by 64 to 26 votes. Members belonging to Akali Dal, CPI and CPI (M) voted against. The Council has not been restored so far. The proposal has, once again, been revived by the Beant Singh Government.

legislation. It is also maintained that there is a dearth of representatives for both the Houses in every State and the Legislative Councils being what they are have not been able to attract whatever talent and experience is available. Moreover, the party in power has always used the Council as a spring-board for its own power and patronage rather than to establish it as a forum of talent and eminence. Sometimes nominations are made to enable certain persons to become Ministers or even Chief Ministers,as C. Rajgopalachari in Madras, Morarji Desai in the erstwhile Bombay State and Gyani Gurmukh Singh Musafir in the pre-organised Punjab State in 1966. The installation of Mandal as Chief Minister of Bihar after the defeat of M.M.Sinha's Ministry was rather dramatic. In a majority of cases nominations have seldom fulfilled the requirements of the Constitution that the members nominated shall be persons having special knowledge or practical experience in respect of such matters as literature, science, art, cooperative movement and social service.

If the Legislative Councils do not fulfil the democratic demands of a double chamber, it is a sheer hoax of democracy to continue with them. D.C. Pavate, who had been Governor of Punjab, says, "For some mysterious circumstances the founding fathers of the Constitution have provided bicameral legislatures in most of the States" and characterised their existence as "just an exercise in delaying legislation."[6] The leader of the BKD Party in the Uttar Pradesh Assembly, Udit Narayan Sharma, stated on April 29, 1970, when the resolution recommending the abolition of the Legislative Council was being discussed, that the Council served no useful purpose and often it made mockery of democracy. To support his argument he maintained that the Assembly had passed the Motion of Thanks to the Governor, but the Council had rejected it, simply because non-Congress Government was in office whereas Congress commanded a majority in the Council. The SSP legislator, Anant Ram, participating in the debate made a point that the Council served no useful purpose as out of 400 Bills referred to it, only four were amended by the Council. He even levelled charges of corruption against members seeking election to the Council and indignantly said that it was a matter of shame that an industrialist "has got himself elected to the Vidhan Parishad (Legislative Council) by buying votes of M.L.A.s." In indirect elections, he added, "voters could be corrupted. Capitalists' attempt to get into the Lower House rarely succeeded, but many of them had managed to become members of the Upper House."[7]

As far back as 1953 the Bombay State Assembly voted for abolition of its Legislative Council by 182 votes to 31. Conformably to the United Front's 32-point programme, West Bengal Government announced its intention in March 1969 to seek the abolition of the Legislative Council. No one, including the Opposition in West Bengal Legislative Assembly, had a good word for the Council and the resolution for its abolition was passed unanimously. It was also abolished in the Punjab[8] followed by Andhra Pradesh and Tamil Nadu. Many other States in which Legislative Councils existed began to appreciate that the scheme of bicameralism was completely out of accord with any sense of constitutional proportion or propriety. It was an expensive experiment and an unnecessary drain on the meagre resources of the States. The Governments in West Bengal, Punjab, Andhra Pradesh and Tamil Nadu,while pleading for the abolition of their Legislative Councils, laid particular stress on the cost of maintaining them. In West Bengal and Punjab it cost each State exchequer Rs.17.72 lakhs a year.

The plain fact is that Legislative Councils in the States have been found to be an expensive luxury and no tears are shed over them, except by the members deprived of cushy seats or the party bosses who shall be handicapped by their abolition in the task of providing some profitable occupation or a sinecure to party rebels or election financiers. Far from functioning as indispensable revisionary bodies, Councils have gradually become political sanctuaries and like the fifth wheel of the coach have turned out to be superfluous, if not positive hindrance. Hardly any of the Legislative Councils can claim to have acted as an effective brake on legislative despotism.

6. Pavate, D.C., *My Days as Governor*, pp. 102-3.
7. *The Times of India*, New Delhi, April 30, 1970.
8. Abolition of the Legislative Council makes a revealing study. Whereas Chief Minister Gurnam Singh wanted its immediate abolition, Sant Fateh Singh, President of the Shiromani Akali Dal, was in favour of its retention. D.C. Pavate, who was then the Governor of the Punjab, noted that the Chief Minister prevailed on the Prime Minister, "to push the abolition of the Council through Parliament speedily." Pavate, D.C., *My Days as Governor*, p. 104.

Legislative procedures are cumbersome enough without them. Nor are they sensitive barometers of public opinion. Their utility, if any, is vitiated by their composition.

THE LEGISLATIVE ASSEMBLY

Composition and Organisation

The Legislative Assembly is the popularly elected chamber and is the real centre of power in a State. The maximum strength of an Assembly must not exceed 500 or its minimum strength fall below 60,except the Legislative Assemblies of Arunachal, Goa, Mizoram and Sikkim. The demarcation of territorial constituencies is to be done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it, as far as practicable, is the same throughout the State. Apart from these general provisions regarding the representation of Scheduled Castes and Scheduled Tribes (except the Scheduled Tribes in the autonomous districts of Assam)in the Legislative Assembly of every State.[9] Seats are also reserved for the autonomous districts of the State of Assam.[10] Provision has also been made to nominate one member of the Anglo-Indian Community, if the Governor is of the opinion that the community is not adequately represented in the Assembly.[11]

The duration of the Assembly, unless sooner dissolved was originally fixed at five years. The Forty-second Amendment Act increased it to six years, but the Forty-fourth Amendmend Act again reverted to five-year term. When a Proclamation of Emergency is in operation, Parliament may by law extend the term beyond five years for a period not exceeding one year at a time. But such an extension must not continue beyond six months after a Proclamation of Emergency has ceased to operate.[12]

The qualifications for membership of the Legislative Assembly are the same as for members of the House of the People. A candidate for election to the Assembly must be a citizen of India,not less than twenty-five years of age, makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation that he will bear true faith and al- legiance to the Constitution of India as by law established and that he will uphold the sovereignty and integrity of India,and possesses such other qualifications as may be prescribed by Parliament. No person can be a member of both Houses of the State Legislature at a time if there is a Legislative Council in that State. No person can also be a member of the Legislatures of two or more States. The Assembly may declare vacant the seat of any member who absents himself from all its meetings for sixty days without the permission of the Assembly.

A person is disqualified for being chosen as a member of the Assembly : if he holds any office of profit under the Government of India or the Government of any State,other than an office declared by the State Legislature by law not to disqualify its holder; if he is of unsound mind and stands so declared by a competent court; if he is an undischarged insolvent; if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State,or is in acknowledgment of allegiance or adherence to a foreign State; if he is so disqualified by or under any law made by Parliament. A person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Government of India or any State Government. If any question arises as to whether a member of the State Legislature is subject to any of the aforesaid disqualifications, the question shall be referred for the decision of the Governor and his decision shall be final. But before giving decision on any such question, the Governor must obtain the opinion of the Election Commission and he is required to act according to such opinion.[13] The decision of the Governor is the opinion of the Election Commission.

The Governor may from time to time summon the House or each House of the State Legislature to meet at such time and place as he thinks fit,but not more than six months shall intervene between its last sitting in one Session and its first sitting in the next Session. The Governor may from time to time prorogue the House or either House and dissolve the Legislative Assembly.

The Governor may address the Legislative Assembly or in case of a State having a Legislative Council either House or both Houses assembled together. He may send messages to either

9. Article 332 (1).
10. Article 332 (2).
11. Article 333 .
12. Article 172, proviso.
13. Article 192 as amended by the Constitution (Forty-fourth Amendment) Act, 1978, S.25.

House on a Bill pending before the Legislature, suggesting any changes or modifications which he may deem necessary . It is the duty of the House to which such a message is sent to consider it with all possible dispatch. The Constitution imposes a duty on the Governor to address the new legislature after every General Election and at the commencement of its first Session every year and inform the Legislature of the causes of its summons. The Legislature is required to provide in its rules for the allotment of time for the discussion of the Governor's address. The debate and voting on the address, in fact, constitutes an annual vote of confidence in the Council of Ministers.

Every Minister and the Advocate-General for a State have the right to speak in both Houses, if it is a bicameral legislature, and to take part in their proceedings as well as in their Committees. But a Minister is entitled to vote only in that House of which he is a member.

The quorum to constitute a meeting of a House of the State Legislature is ten members or one-tenth of the total number of members of the House,whichever is greater, if until the State Legislature by law otherwise provides.[14] All questions at any sitting of the House are determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such. The Speaker or the Chairman shall not vote in the first instance but he shall have and exercise a casting vote in the case of equality of votes.

The Speaker

The Assembly chooses two of its members as the Speaker and the Deputy Speaker. A Speaker vacates his office if he ceases to be a member of the Assembly. He may also resign his office at any time. A Speaker may be removed from office by a resolution of the Assembly passed by a majority of all the then members of the Assembly after fourteen days' notice of the intention to move such a resolution. But he does not vacate his office on the dissolution of the Assembly. He continues to be the Speaker until immediately before the first sitting of the Assembly after the dissolution. While the office of the Speaker is vacant, the Deputy Speaker performs his duties.

The duties and powers of the Speaker are, broadly speaking, the same as those of the Speaker of the House of the People (Lok-Sabha). The Speaker is an independent and impartial presiding officer and has been invested with all the powers consistent with the dignity of the Chair and necessary to ensure the orderly conduct of the business of the Assembly. He is empowered to admit questions, resolutions and motions and allots time to the different kinds of business before the Assembly. He determines, in consultation with the Leader of the House, the order of business and fixes the time-limits to speeches. He maintains proper order and decorum in the House and has the power to ask a member to withdraw from the House for any violation of the rules of the House or to suspend him for a whole session if his conduct is grossly disorderly or, is in flagrant disregard of the authority and rulings of the Chair. The Speaker nominates the panel of Chairmen and the Chairmen of the Select Committees on Bills as well as of other Committees of the House. He interprets the Rules of the Assembly and decides all points of order and questions of procedure. His ruling cannot be contested; it is final.

The Speaker, in brief, is the impartial custodian of the rights of the members of the House. But the high traditions of the office and the great reverence in which the Speaker should be held are altogether absent in the States of India, Exchanges of hot words between the Speaker and some members are not infrequent. There have been limitless number of cases in which a member who is 'named'had refused to apologise or quit the Chamber on being called upon by the Speaker to do so. Frequently, services of the Marshal are requisitioned to make a recalcitrant member to leave the House in obedience to the instructions of the Speaker. The Uttar Pradesh Assembly provided an unprecedented instance on September 8,1958 in which the Marshal was compelled to requisition the help of the armed constabulary to turn out the leader and members of the Socialist group who defied the Speaker's order to quit the House. But what happened in West Bengal on September 21,1959 was disgracefully reckless. Not only did members of the Congress Party and the Opposition, notably the Communists,indulged in shouting down one another, but also hurled shoes at one another. As if this was not enough three mikes were pulled from their sockets and thrown at the Treasury Benches. Two members challenged each other on the floor

14. Clauses 3 and 4 of Article 189 restored by the Constitution (Forty-fourth Amendment) Act, 1978, S. 45 by repealing S. 31 of the Constitution (Forty-second Amendment) Act, 1976, which had omitted them.

of the House and later exchanged blows in the lobbies until they were separated by the sober colleagues. In the Madhya Pradesh Assembly one member, disregarded the authority of the Chair, obstructed the proceedings of the House, and rushed to the dais and caused criminal assault on the Deputy Speaker who was on the Chair on March 16, 1966. Another member used insulting language against the Chair and threw chappal (footwear) towards the Chair. The House expelled them by adopting motions and declared their seats in the Assembly vacant. They challenged the decision of the House in the High Court in writ petitions,but the Court upheld the decision of the House. These are just few of scores of such examples and some are even disgraceful.

The Speakers, too,have very often not acted with due discretion. The Speaker of the erstwhile Patiala and East Punjab States Union was saved from removal from office by the prorogation of the House by the Rajpramush. Another Speaker apologised to the House when his conduct was sought to be discussed by a privilege motion. Yet another tried to explain away the offending remarks and even offered to expunge them from the proceedings. In Andhra Pradesh the leave to move the resolution against the Speaker was refused because the requisite support of the members was not forthcoming. The West Bengal Speaker adjourned the Assembly *sine die*, soon after it met on November 29,1967,as he thought that the dismissal of the United Front Ministry and appointment of Dr.P.C.Ghosh as Chief Minister by the Governor were unconstitutional and invalid "since it has been effected behind the back of this House."He also said that he might again adjourn the Assembly, *sine die,* if it was reconvened by the Governor "unless I change my view that the appointment of Dr. P.C. Ghosh as Chief Minister and the summoning of the House on his advice unconstitutional and invalid." The Speaker did it for the second time when the House met for the Budget session. In Punjab, Speaker Joginder Singh Mann adjourned the Assembly for two months when the Financial Statement had been laid before the House and the financial business was about to be gone through. The Speaker had to face two motions expressing no confidence in himself and the Assembly was adjourned most probably to escape or evade the consequences of these motions.

Such actions on the part of the Speaker neither add to the dignity of the Chair nor do they help the growth of traditions associated with the office of the Speaker. India has not in the last four decades evolved any concept of non-partisan Speakership. There have been numerous instances of Speakers becoming Chief Ministers or Ministers at the Centre. One was appointed a member of the Union Public Service Commission. The result is, what is happening in the Chambers of the State Legislatures. In August 1969, the Speaker of Assam Legislative Assembly was *gheraoed* and microphones were uprooted by some of the members. There, at least, no violence was attempted on the person of the Speaker. But just a fortnight later, in the Uttar Pradesh Assembly shoes,seat-cushions and booklets were thrown at the Speaker. The Speaker called the Marshal and the police to eject Opposition members,while the Deputy Speaker,who belonged to the Opposition, shouted at the police to get out of the Chamber. Much worst is happening today than that happened yesterday.

Functions of the Assembly

The State Legislature has exclusive power over subjects enumerated in List II (State List) and Concurrent powers over those enumerated in list III (Concurrent List). But if Parliament passes a law on a matter contained in the Concurrent List, the State Legislature is not competent to pass law on the same subject. If the State Legislature, on the other hand, has passed a law on a subject given in the Concurrent List, Parliament, too, can pass a law on the subject and the State law becomes inoperative to the extent it is repugnant to the Union law. The State law, however, prevails notwithstanding such repugnancy, if it was reserved for the President and had received his assent.

The Constitution also imposes the following restrictions on the powers of the State Legislatures even within their exclusive jurisdiction:

(1) Some State laws will be invalid unless they are reserved for consideration of the President and are assented to by him, for example, laws passed by the State Legislatures for the acquisition of property; laws in respect of concurrent matters which are repugnant to earlier legislations of Parliament; laws providing for the imposition of taxes on the sale or purchase of commodities declared by Parliament to be essential for the life of the community.

(2) Some Bills require the previous sanction of the President before they can be intro-

duced in the State Legislatures, for instance, Bills seeking to impose restrictions in the public interest on the freedom of trade,commerce or intercourse within or without that State.

(3) Parliament is also empowered to legislate with respect to a matter in the State List if the Council of States (Rajya Sabha) declares by a two-thirds majority that it is expedient in the national interest for Parliament to do so. Such a resolution remains in force for a period of one year at a time, but not exceeding a total of two years.

(4) While a Proclamation of Emergency is in operation Parliament has the power to legislate with respect to any matter in the State List.

(5) In case of failure of the constitutional machinery in a State, the President may suspend the State Legislature and vest its powers in Parliament.

A Bill, other than a Money Bill, may originate in either House of the State Legislature, if there is a Legislative Council. A Bill is deemed to have been passed by the Houses of the Legislature when it is agreed to by both the Houses, which for all intents and purposes means the Legislative Assembly. The Council cannot force its decision on the Assembly. It can simply delay the passage of a Bill for four months. In brief, all legislative power of the State, subject to the power of issuing Ordinances by the Governor when the Legislature is not in session, is concentrated in the Assembly.

The control of the Legislative Assembly is complete over the finances of the State. All Money Bills must originate in the Assembly and its verdict must prevail in all respects. In case there is a Legislative Council, it must return a Money Bill to the Assembly within fourteen days of its receipt with or without recommendations. If it is not returned within that period, or the recommendations are not acceptable to the Assembly, the Bill is deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly. The Annual Financial Statement or the Budget is required to be laid before the House or the Houses of the State Legislature. All proposals for expenditure, except the expenditure charged on the revenues of the State which can be discussed but not voted upon by the State Legislature,are submitted to the Legislative Assembly in the form of demands for grants. The voting of grants is the exclusive privilege of the Assembly and it has the power to pass or reject a demand or to reduce its amount, though it has not the power to increase the amount. It is, further, provided that no tax will be levied in a State without the sanction of the Legislative Assembly.

The control of the Assembly over the administration of the State is a logical conclusion of the parliamentary system of Government. The Council of Ministers is formed out of the majority party in the Assembly,and it is collectively responsible to it. No one can continue to remain a Minister for more than six consecutive months without a seat in the one or the other House of the Legislature. The salaries and allowances of the Ministers are voted by the Assembly.

The Assembly can seek information from the Government on any matter of public administration by means of questions and supplementaries. It can also move and pass resolutions recommending to the Government steps which should be taken on matters of public importance. The Assembly may censure the Government if it does not approve its policy and pass a vote of no-confidence, entailing the resignation of the Ministry.

The Legislative Assembly forms part of the Electoral College for electing the President.

LEGISLATIVE PROCEDURE

Legislative Procedure

The Constitution prescribes the most important rules of procedure of the State Legislatures and they are covered by Articles 196-221. Detailed rules have been left for determination by the State Legislatures themselves. The rules prescribed by the Constitution are similar to those prescribed for Parliament. Articles 107-111, and the rules formed by the State Legislatures follow the model of Parliament as incorporated in its Rules of Procedure and Conduct of Business.

Legislative Bills

Accordidng to the Legislative procedure a Bill other than a Money or Finance Bill, may originate in either House of the State Legislature which has a Legislative Council. A Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses,either without amendment or with such amendments only as are agreed to by both Houses. The prorogation of a House or Houses does not involve the lapse of a Bill pending in the State Legislature. Bills pending in the Council but which have not been passed by the Assembly do not lapse on a dissolution of the Assembly.

The dissolution of the Assembly causes the lapse on any Bill which is pending in it, or which has been passed by it but is pending in the Legislative Council.

In case of disagreement between the Legislative Assembly and the Legislative Council over a Bill, the Constitution does not provide for a joint sitting of both Houses, as it is in the case of the Union Parliament, for the resolution of such disagreements. Disagreements between the two Houses of the State Legislature are resolved by the simple expedient of the Assembly passing the disputed Bill for the second time. The Constitution says,if a Bill has been passed by the Legislative Assembly and transmitted to the Legislative Council and (a) is rejected by the Legislative Council, or (b) more than three months elapse from the date of its receipt by the Legislative Council without the Bill being passed by it, or (c) a Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, then the Assembly may pass the Bill again either in its original form or with such amendments as have been suggested by the Council and agreed to by the Assembly. When the Assembly passes the Bill for the second time it is transmitted to the Legislative Council and if (a) the Bill is, again rejected by the Council, or (b) more than one month elapses from the date of its receipt by the Council without the Bill being passed by it, or (c) the Bill passed by the Council with amendments to which the Assembly does not agree, the Bill is deemed to have been passed by both the Houses of the State Legislature in the form in which it was passed by the Legislative Assembly for the second time.

When a Bill has been passed by the State Legislature it is presented to the Governor for his assent. The Governor may either give his assent to the Bill or withhold his assent thereform or may reserve it for the consideration of the President or he may return it with a message for reconsideration in whole or in part or may suggest amendments, thereto. In the last case, if the Bill is again passed with or without amendments, the Governor must give his assent thereto.

Different Stages in the Passage of a Bill

A Bill other than a Money Bill, in order to become a law, has to pass through three readings in each House, if the State has a bicameral Legislature. The first reading covers the introduction of the Bill. The motion for leave to introduce a Bill is a formal business. The member asking for leave makes a short speech. By convention no debate takes place at this stage and the Speaker immediately puts the question. If the House grants the leave,the mover of the Bill rises to say, "Sir, I introduce the Bill." No speech is made on the contents of the Bill nor does any other member speak on the motion or the BIll. If a motion for leave is opposed, the Speaker permits the member moving the Bill to make a brief explanatory statement and so does the member opposing it. Then, the question is put to the House. But if the Opposition attacks the Bill on the ground of incompetency of the Legislature to consider it, the Speaker permits a full discussion thereon.

After the Bill has been introduced, it is immediately published in the State Government Gazette. The Speaker may permit the publication of the Bill in the Government Gazette before the motion for leave to introduce the Bill has been made. In that case, it is not necessary to move for leave to introduce the Bill and if the Bill is afterwards introduced it is not necessary to publish it again. The first reading of the Bill is now complete.

The second reading of the Bill is divided into two stages. The first stage consists of a general discussion on the Bill and the second stage relates to the discussion of clauses, schedules and amendments. The first stage in the second reading begins when the member in whose name the Bill stands moves one of these motions: (a) that it may be taken into consideration either at once or at some future date to be mentioned; or (b) it be referred to the Select Committee of the Houses; or (c) to Joint Committee of the two Houses, if there is a Legislative Council in the State; or (d) it be circulated for the purpose of eliciting public opinion. It is here that the member-in-charge of the Bill explains the purpose and objects of the Bill, gives the background of bill, explains the circumstances in which the Bill is necessary, and gives such other material information as may be necessary in respect of the Bill. The Opposition opposes the Bill, but the discussion must be confined around the principles of the Bill and its general provisions. No amendment to the Bill can be introduced at this stage,except for amendments to the motion that the Bill be taken into consideration or it be referred to a Select Committee or it be circulated for eliciting public opinion.

When the motion that a Bill be referred to a Select Committee is made, the member-in-charge of the Bill indicates the names of members who would constitute the Select Committee as also the date by which the Select Committee should submit its report to the House. The Select

Committee usually consists of ten to fifteen members and only such members are appointed as are willing to serve on it. The mover ascertains in advance from such members their willingness to serve on the committee. The Speaker nominates one of the members of the committee to be its chairman. The Committee thoroughly examines the Bill and all its provisions, discusses it clause by clause, may ask for relevant papers and records,may hear expert evidence and representatives of special interests affected by the measure and suggest its own changes and modifications. The Chairman of the Committee, then, presents the Report to the House. He may make any remarks, but he has to confine himself to a brief statement of facts and there can be no debate on it. The Report and the Bill, as amended by the Select Committee, are published in the State Government Gazette.

After the Report has been presented,the member-in-charge of the Bill may move: (1) that the Bill as reported by the Select Committee be taken into consideration;or (2) that the Bill be recommitted either (a) without limitation or (b) with respect to particular clauses or amendments only, or (c) with instructions to the Select Committee to make some particular additional provision in the Bill. If the member-in-charge of the Bill moved that the Bill be taken into consideration, any member may move an amendment that the Bill be recommitted. Then, follows the final stage and the third reading of the Bill when a motion is made that the Bill be passed. After such a motion has been made no amendment,except that which is formal,verbal or consequential to an amendment to the Bill, can be made. The discussion on a motion that the Bill be passed is confined to either support or rejection of the Bill as a whole.

After the House has passed the Bill, it is transmitted to the other House, if there is one, where it undergoes the same process. When the Bill has been passed by the House or Houses it is submitted to the Governor for his assent and if it is assented to by him or by the President, when reserved for his consideration, it is published in the State Government Gazette as an Act of the State Legislature.

Money Bill

A Money Bill or Financial Bill must originate in the Legislative Assembly. It cannot be introduced in the Legislative Council if the State has one. If any question arises whether a Bill is a Money Bill or not the decision of the Speaker of the Assembly thereon is final and the Speaker shall endorse a certificate on such a Bill that it is a Money Bill when it is transmitted to the Legislative Council or to the Governor for assent. A Money Bill cannot be introduced or moved except on the recommendation of the Governor. After a Money Bill has been passed by the Assembly, it is transmitted to the Legislative Council, if the State Legislature is bicameral, for its recommendations. The Council is required, within fourteen days of its receipt, to return the Bill to the Legislative Assembly with its recommendations. The Assembly may accept or reject the recommendations so made. If the Assembly does not accept any of the recommendations, the Money Bill is deemed to have been passed by both Houses in the form in which it was originally passed by the Legislative Assembly. If the Legislative Council does not return the Bill with its recommendations within the prescribed period of fourteen days, it is deemed to have been passed, on the expiration of the said period, in the form in which it was passed by the Legislative Assembly.

FINANCIAL PROCEDURE

The principles underlying the financial procedure in the State Legislatures are the same as in the Union Parliament and they are in complete accord with the system of representative government and a sound system of public finance. The Government has, in the first place,the exclusive right to initiate financial legislation. Secondly, the Legislative Assembly alone has the power to make grants and to appropriate funds for different items of expenditure and to impose taxes and authorise borrowing by the Government. Finally, statutory authorization is necessary for all expenditure out of the Consolidated Fund and for all taxes imposed.

Annual Financial Statement

In every financial year the Governor shall cause to be laid before the State Legislature an Annual Financial Statement or Budget. The Annual Financial Statement must clearly show separately the expenditure charged on the Consolidated Fund, and must also distinguish expenditure on revenue account from other expenditure. The following expenditure is charged on the Consolidated Fund:—

(1) the emoluments and allowances of the Governor and other expenditure relating to his office.
(2) the salaries and allowances of the Speaker and the Deputy Speaker of the

Legislative Assembly, and of the Chairman and the Deputy Chairman of the Legislative Council in the case of States with bicameral Legislatures;

(3) the interest, sinking fund charges and other debt charges of the States;

(4) the salaries and allowances of the Judges of the High Court;

(5) sums required to meet any judgment, decree or award of any Court or arbitral tribunal; and

(6) any other expenditure declared by the Constitution or by the State Legislature by law to be so charged.

It may be noted that the Constitution declares the following sums also to be expenditure charged on the Consolidated Fund of the State;

(a) the administrative expenses of a High Court including all salaries, allowances and pensions payable to the officers and servants of the Court [Article 229 (3)]; and

(b) sums necessary to meet the expenses of the State Public Service Commission, inclouding any salaries, allowances and pensions payable to the members or staff of the Commission (Article 322).

The expenditure charged on the Consolidated Fund of the State is not subject to the vote of the State Legislature. But the Legislature can discuss the estimates of the expenditure. The other expenditure is submitted in the form of demands for grants to the Legislative Assembly. The Assembly has the power to discuss, assent or refuse to assent to any demand, or to reduce the amount of the demand. It cannot, however, either propose new grants or increase the amount of the demand. No demand for a grant can be made except on the recommendation of the Governor, that is, on the responsibility of the Ministry.

Stages in Financial Legislation

There are five stages in the passage of the Annual Financial Statement or the Budget. The first stage covers the presentation of the Annual Financial Statement by the Finance Minister to the State Legislature. The presentation of the Annual Financial Statement is accompanied by an explanatory speech. After a few days, there is a general discussion on the proposals and members of the Legislature express their opinion on the policy of the Government. A fixed number of days, usually three or four, are allotted for this purpose, and it finishes the second stage. In the third stage voting of grants takes place. A separate demand is made for each department by the Minister-in-charge and it is here that the department comes under full scrutiny. A vote to reject or reduce the demand may be made by any member,but it is not within the competence of members to propose either new grants or an increase in the amount demanded. About twenty days are usually allotted for the voting of grants. On the last date and one hour before the adjournment of the sitting of the Assembly all demands which have not been disposed of till then are put to vote. No amendment or discussion is allowed on such demands. They must be accepted or rejected by the Assembly.

The next stage is the Annual Appropriation Bill which must be passed into a statute. After the grants have been made by the Assembly,a Bill is introduced to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet (a) the grants so made by the Assembly, and (b) the expenditure charged on the Consolidated Fund of the State. No amendment, which will have the effect of varying the amount or altering the destination of any grant so made can be proposed in the Bill. The decision of the presiding officer whether an amendment is admissible or not is final. The Appropriation Bill having passed through all stages is finally voted upon and if passed by the Assembly, it is certified by the Speaker as Money Bill and transmitted to the Legislative Council, if there is one in the State.

Another step in the completion of the Annual Financial Statement is the passage of the Finance Bill. A Bill which sets out the ways and means by which revenues necessary for meeting the expenditure of the State for the ensuing year are to be raised is called the Finance Bill. The Finance Bill is presented to the State Legislature at the same time as the Budget and the procedure followed is that of a Money Bill. The Bill must be passed before the end of April, but the financial proposals become operative immediately after the presentation of the Budget under the Provisional Collection of Taxes Act,1931.

SUGGESTED READINGS

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CHAPTER XV

The State Judiciary

The High Courts

The High Courts had been functioning in India for nearly ninety years when India became Independent and these High Courts had an eminent record of independence and impartiality. But all the Provinces of pre-Independent India did not have High Courts. The Calcutta High Court exercised jurisdiction over Assam and the Patna High Courts over Orissa. The United Provinces had two High Courts,the Allahabad High Court and the Chief Court with its headquarters at Lucknow. Both these courts exercised appellate jurisdiction. By July 1948, however every Province had a High Court of its own. Originally, the 1950 Constitution provided for a High Court in each Part A and Part B States. Parliament was also empowered to create a High Court, or extend the jurisdiction of a neighbouring Part A or Part B State to a Part C State. There were, as such, 18 High Courts and 7 Judicial Commissioners' Courts, one for each Part C State other than Coorg and Delhi.

The reorganization of the States reduced the number of the High Courts, but with Sikkim becoming the twenty-second State of India and having its own separate High Court, the number was again eighteen including three having jurisdiction over more than one State. The Punjab and Haryana High Court has jurisdiction over the States of Punjab and Haryana. Gauhati High Court's jurisdiction extends over Assam, Manipur, Meghalaya, Nagaland, Mizoram and Arunachal. The Bombay High Court's jurisdiction now extends to Goa. Among the Union Territories, Delhi alone has a High Court of its own.[1]

The position of the High Courts in India materially differs from that of the State courts in most other federations, notably that of the United States of America. In America the State Courts are constituted under the State Constitutions and, consequently, they have no connection with the federal judicial system. The method of appointment of judges, their service conditions and the jurisdiction of the State Courts differ from State to State. In India all High Courts are constituted under one constitution with uniform jurisdiction and conditions of service of the Judges and they are subject to transfer from one State to another. The State Governments have no control over the High Courts. Nor can they alter the constitution or organisation of the High Courts. It can be done only either by amending the Constitution or the law of Parliament.

A High Court consists of the Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Originally, proviso to Article 216 empowered the President to appoint as many Judges as he might deem necessary from time to time, and also fixing from time to time the maximum strength of each High Court. The Constitution (Seventh Amendment) Act, 1956 omitted the proviso as it was considered to be of little significance from the practical point of view since the Presidential Order could be changed from time to time.

Appointment of Judges

The Constitutional Adviser suggested, in his Memorandum of May 30, 1947 on the Provincial Constitution that the High Court Judges might be appointed by the Governors with the approval of two-thirds of the members of the State Council.[2] The proposal to set up a State Council was abandoned and the Provincial Constitution Committee, accordingly, recommended that Judges should be appointed by the President in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Provinces (States), except when the Chief Justice himself was to be appointed. Explaining the proposal in the Constituent Assembly, Sardar Vallabhbhai Patel said that the proposal was designed to ensure fair appointments to the High

1. Bombay has territorial jurisdiction over Dadra and Nagar Haveli; Calcutta over Andaman and Nicobar Islands; Kerala over Lakshadweep; Madras over Pondicherry; Punjab and Haryana over Chandigarh.
2. A body in the nature of the Privy Council to be set up at the Centre to advise on several matters. See *ante*.

Courts so that the Judiciary should be above the suspicion of party influence.[3] The Constituent Assembly accepted the proposal.

The President appoints the Chief Justice of a High Court by warrant under his hand and seal after consultation with the Chief Justice of India and the Governor of the State. But in making the appointments of Puisne Judges, the President consults in addition the Chief Justice, of the High Court to which they are being appointed.[4] A Judge of a High Court must be a citizen of India and (a) must have held for, at least, ten years a judicial office in the territory of India, or (b) must have been for, at least, ten years an advocate of High Court. The Constitution does not provide for the appointment of non-practising lawyers as Judges of High Court. But a person is qualified for appointment as a Judge of the Supreme Court if he is, in the opinion of the President, a distinguished jurist.

The Law Commission in its 80th Report on "the method of appointment of Judges" which was presented to the Council of States (Rajya Sabha) on January 28, 1980, opined that the present scheme was basically sound but some marginal improvements were necessary. The Chief Justice of a State High Court should consult two of his seniormost colleagues before recommending a name and this should be normally accepted by the Government. The Chief Justice's recommendation should be accepted by the Chief Minister within a month and outside limit of seven months should be fixed for acceptance. The Commission did not rule out a direct meeting between the Chief Justice and the Chief Minister to resolve any dispute over choice. The Chief Minister should only have a right to comment on the name or names proposed by the Chief Justice. The Commission rejected the proposal that the Chief Justice should propose a panel of names since it would dilute its majority. The minimum age of a Judge should be 45 years. For persons recruited from the Bar directly, the age should be 54.

As for the Chief Justice, only the seniormost person should be chosen. As the proposal to the office of the Chief Justice emanated from the Chief Minister himself, he should confine himself to taking the initiative for the appointment of the Chief Justice based on the principle of seniority. If for any reason this was not considered feasible, the proper course would be to select some Judge from outside the State. It should, however, be ensured that the Judge so appointed as Chief Justice should have been on the High Court Bench for a sufficiently long time and should be senior enough as a Judge as not to cause resentment among the senior Judges of the High Court that some one junior in service had been appointed in supersession of their claim. In no case should a junior Judge of the High Court be appointed as Chief Justice in supersession of a senior.

The Commission coupled its suggestion with another salutary suggestion. It recommended that persons to be appointed to the High Courts or Supreme Court should not have "any affiliation with a political party continuously for seven years preceding their appointment."

Considerable controversy revolved on the unanimous recommendation of the Consultative Committee of Parliament attached to the Ministry of Law and Justice that the Chief Justice and at least one-third of the number of Judges of a High Court should be from outside the State under its jurisdiction. The Law Minister took note of the consensus at the meeting. On July 24,1980, the Law Minister assured the House of the People (Lok Sabha) that the Government would seek the guidance of the Supreme Court while evolving a mechanism on the appointment of Chief Justices of the High Courts. He explained that the Bar Council had passed the resolution expressing its disapproval on the presumption that the Government had already taken a decision on the issue. Reiterating the Government's commitment to the independence of the judiciary, the Law Minister said he was even prepared to entrust the Supreme Court with the job of evolving the mechanism for the appointment of Chief Justices. The Chief Justice of India was initially not favourably inclined to the proposal as, in his opinion, it would effect the efficiency of the judiciary. His main argument was that Judges have to deal with the local sentiments, traditions, customs and language. The consensus of the Council of Chief Ministers of the four Southern States was review of Centre-State relations and, *inter alia,* to safeguard the independence and competence of the judiciary by ensuring that High Court Judges were familiar with the language and customs of the concerned State.

3. *Constituent Assembly Debates,* Vol. IV, p. 710.
4. Article 217.

The original Article 224 made provision for the attendance of retired Judges at sittings of the High Court, similar to the one in the case of the Supreme Court. But the Constitution (Seventh Amendment)Act, 1956, conferred on the President the power of making appointments of temporary additional and acting Judges. Additional Judges may be appointed for a period not exceeding two years when it appears to the President that by reason of increase in the business of a High Court or arrears of work such appointments are necessary.[5] A duly qualified person may be appointed by the President as an acting Judge when a permanent Judge is absent from the duties of his office or is acting as Chief Justice. He shall continue to act until the permanent Judge has resumed his duties.

Article 224-A makes provision for the appointment of retired Judges at sittings of High Courts. The Chief Justice of a High Court may at any time, with the previous consent of the President, request any person who has held the office of a Judge of any High Court in India to sit and act as a Judge of the High Court of that State. While so sitting and acting he is entitled to such allowances as the President may by order determine and has all the jurisdiction, powers and privileges of a Judge, but is not otherwise deemed to be a Judge of that High Court.

Originally, Judges held office until they attained the age of sixty years. The Constitution (Fifteenth Amendment) Act, 1963, raised the age of retirement from 60 to 62 years. But a Judge may resign office or may be removed from his office by the President in the same manner as a Judge of the Supreme Court may be removed. Judges of the High Courts, accordingly, enjoy a security of tenure similar to that of the Judges of the Supreme Court. They can be removed only on the ground of proved misbehaviour or incapacity by the President on an address of Parliament adopted separately by each House by a majority of its total membership as well as by a two-thirds majority of those present and voting.

It is easier to amend the Constitution than to remove a judge from his office. Whilst expecting high rectitude from the dispensers of justice the Constitution guarantees them virtual irremovability in order to ensure independence of the judiciary. On June 24,1948, Jawaharlal Nehru stated in the Constituent Assembly that our judges should be "first-rate" men of the "highest integrity" who "should stand up against the executive government and whoever may come in their way."

The Constitution originally provided that a person who had retired as a Judge of a High Court could not plead or act in any Court or before any authority within the territory of India. The Constitution (Seventh Amendment) Act, 1956, partially modified the bar on retired High Court Judges. The amended article 220 now permits a retired High Court Judge to practise before the Supreme Court and any High Court other than the one in which he was a permanent Judge. But the Law Commission has criticized this provision and recommends for its abolition.

The salaries of the High Court judges cannot be varied and neither Parliament nor State Legislatures have any power in this matter. The President, however, is empowered to reduce the salaries of the Judges during the operation of the Proclamation of Financial Emergency. Allowances and rights in respect of leave of absence and pension of the Judges are determined by an Act of Parliament. Neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment. Salaries and allowances of the Judges have been charged on the Consolidated Fund of the State and hence are not votable. Their pensions are charged on the Consolidated Fund of India.

Transfer of Judges

Article 222 provides for transfer of a Judge from one High Court to another. The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to another. According to the original provision a Judge transferred from one High Court to another was entitled to a compensatory allowance. This

5. The Government of India had been giving "piecemeal" extensions to additional Judges of several High Courts. Among the Judges favoured with short-term extensions were Justices O. N. Vohra, S. N. Kumar and B.S. Wad of the Delhi High Court. Fearing that they might not be given a further extension by the Government for reasons other than judicial, V.M. Tarkunde moved the Supreme Court with a request that the Government be asked to decide about their future most expeditiously. The Constitution Bench directed the Government on May 8, 1981 to take a decision at least ten days before the short-term extension of the three Judges expired. The Government granted only one year's extension to Justice Wad and refused to grant any extension to the other two Judges, though they were senior to Justice Wad. Justice Kumar went to the Supreme Court for redressal. For months the Supreme Court heard the arguments and in some aspects the case took an ugly shape. The majority opinion upheld the action of the Government.

was considered to have no justification and the Constitution (Seventh Amendment) Act, 1956, amended Article 222 to that extent. But the Constitution (Fifteenth Amendment) Act,1963, restored the original position and clause (2) which was omitted by the Seventh Amendment Act now provides that when a Judge has been transferred from one High Court to another,he shall be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament and, until so determined, such compensatory allowance as the President may by order fix.

Between 1950 and 1975 judges of various High Courts were transferred; in each case with the consent of the judges transferred. Even when the States were reorganised and when the States of Maharashtra and Gujarat were carved out of the State of Bombay, only those judges of the existing Bombay High Court were transferred to the new High Court of Gujarat who consented to such transfer. During the Emergency in 1975, sixteen judges from various High Courts were transferred after consultation with the Chief Justice of India, A.N. Ray, to promote "national integration". One of these sixteen judges filed a writ petition in the Gujarat High Court against the orders of his transfer to Andhra Pradesh High Court and it succeeded. The Union Government filed an appeal in the Supreme Court. The Supreme Court decided by a majority of 3:2 that the President in consultation with the Chief Justice of India could transfer a Judge of the High Court under Article 222 in the "public interest "and the consent of the concerned judge was not a prerequisite.

The Consultative Committee of members of Parliament attached to the Ministry of Law and Justice unanimously recommended on June 7,1980 that the Chief Justice and at least one-third of the Judges of a High Court should be from outside the State under its jurisdiction. It also urged the Government to strictly implement in letter and spirit the provision of Article 222 of the Constitution relating to the transfer of Judges from one High Court to another. The Law Minister, P. Shiva Shankar,took note of the consensus at the meeting about the higher judiciary and said the mechanics of such appointments would have to be worked out in detail so that these could be implemented without discrimination.

Normally,the appointment of Chief Justices of High Courts and transfer of Judges should be above controversy and totally free of political motivation. But following the unhappy experience of Emergency period and the irresponsible talk by politicians of a "committed judiciary" fears were expressed in certain quarters, including the vast majority of lawyers in the country,that the new system being considered for senior judicial appointments and their transfers might be prompted by extraneous considerations. The recommendation of the Consultative Committee was designed to eliminate the chances of local prejudices and pressures determining the outcome of cases so as to ensure full justice to everyone. Such postings might in fact prove all to the good. The Law Commission's 80th Report presented to the Council of States (Rajya Sabha) on January 28, 1980, favoured the evolution of a convention according to which one-third of the judges in each High Court should be from another State. "This would have to be done through the process of initial appointments,and not by transfer ." However, the Commission approved the transfer of a Judge to preserve "the image and good name of the judiciary". But the Commission added the proviso that "no judge should be transferred without his consent from one to the other unless a panel consisting of the Chief Justice of India and his four seniormost colleagues finds sufficient cause for such a course. In case of differences between the members of the panel, the view of the majority should be taken to be the view of the panel." The Chief Justice of India was originally opposed to the transfer of Judges, as a matter of policy, as distinct from individual cases, but ultimately he veered round the Government's point of view.

Jurisdiction of the High Courts

The Constitution does not attempt detailed definitions or classification of the different types of jurisdiction of the High Courts. It was presumed that the High Courts which were functioning with well-defined jurisdiction at the time of the framing of the Constitution would continue with it and maintain their position as the highest courts in the Statue. The Constitution,accordingly, provided that the High Courts would retain their existing jurisdiction subject to the provisions of the Constitution and any future law that was to be made by the Legislature. This was affirmed by the Supreme Court in *National Sewing Thread Co. Ltd.* v. *James Chadwick and Bros. Ltd.(1953)*

Besides the normal original and appellate jurisdiction, the Constitution vested in the High

Courts four additional powers: (1) the power to issue writs or orders for the enforcement of Fundamental Rights or for any other purpose; (2) the power of superintendence over subordinate Courts; (3) the power to transfer cases to themselves pending in the subordinate Courts involving interpretation of the Constitution; and (4) the power to appoint officers.

The Constitution (Forty-second Amendment) Act,1976, denuded the High Courts of substantial powers and jurisdiction. Section 38 of the Amendment Act substituted a new Article for the original Article 226. While the High Courts still exercised the power to issue writs or orders in the nature of *habeas corpus, mandamus, prohibition, qua waranto* and *certiorari,* or any of them for the enforcement of Fundamental Rights, but they could no longer exercise jurisdiction in any case where there was an invasion of a legal right. The words "for any other purpose" originally inclouded in Article 226 were omitted and in their place quite a restricted jurisdiction was provided, that is in (a) cases where there was a contravention of a statutory provision causing substantial injury, and (b) cases where there was an illegality resulting in substantial failure of justice. In either case the court had to be satisfied before issuing directions, orders or writs that there was no other remedy available in any law to seek redress. Provision was also made that the High Courts would not issue interim order ordinarily except on notice to the other side and after giving the other side the opportunity to be heard. An exception could be made in cases where the loss or damage could not be compensated in terms of money. But an interim order would not be granted if the effect of such an order was to delay any inquiry into a matter of public importance or any investigation or inquiry into an offence punishable with imprisonment or action for the execution of any work or project of public utility.

The newly inserted Article 226A debarred the High Courts from considering the constitutional validity of any Central law in any proceeding under Article 226. Hitherto the courts could consider the constitutional validity of both the Central and State laws in writ proceedings or otherwise. Article 131 A, also inserted by the Forty-second Amendment Act,1976, (S. 23) conferred upon the Supreme Court alone the exclusive jurisdiction in regard to questions involving the constitutional validity of central Laws. Article 228 was amended to provide that where a High Court was satisfied that a case pending before it involved any question as to the constitutional validity of any Central law or of both Central and State laws, the High Court was required to refer it for the decision of the Supreme Court.

The newly inserted Article 228A provided for the minimum number of Judges of a High Court who would sit for determining any questions to the constitutionality of any State law. The minimum number of Judges comprising the Constitution Bench was fixed at five. But where the number was less than five in a High Court all the Judges of that High Court would constitute the Bench. If the number of the Judges were five or more the decision as to the constitutional validity of law in question was to be determined by a two-thirds majority of the Judges sitting on the Bench. If the number was less than five, the law in question could not be declared invalid unless all the Judges held it to be so.

The Constitution (Forty-third Amendment) Act, 1977, made drastic amendments to the provisions of the Forty-second Amendment Act. It, *inter allia*, omitted Article 131A (exclusive jurisdiction of the Supreme Court in regard to questions as to the validity of Central laws), Article 226A (constitutional validity of Central laws not to be considered in proceedings under Article 226) and Article 228 A (special provisions as to the disposal of questions relating to constitutional validity of State laws). The rest was achieved by the Constitution (Forty-fourth Amendment) Act, 1978, by substantially amending Article 226 (power of High Courts to issue certain writs).

The High Courts are primarily Courts of appeal. Only in matters of admiralty, probate, matrimonials, contempt of Court, enforcement of Fundamental Rights and cases ordered to be transferred from a Lower Court involving the interpretation of the Constitution to their own file, they have original jurisdiction. The High Courts of Bombay, Calcutta and Madras exercise original civil jurisdiction when the amount involved exceeds specified limit. In criminal cases it extends to cases committed to them. On the appeal side they entertain appeals in civil and criminal cases from their subordinate courts as well as from their original side. For historical reasons and as a result of the specific provisions in the Government of India Act,1950, no High Court had any original jurisdiction in any matter concerning revenue. The 1950 Constitution re-

moved this restriction. The Forty-second Amendment Act again took it away by omitting proviso to Article 225. But it has been restored by the Constitution (Forty-fourth Amendment) Act, 1978; the jurisdiction as it existed at the commencement of the Constitution in 1950.

The jurisdiction as well as laws administered by a High Court can be effected both by Parliament and State Legislature. Parliament exercises exclusive power to make laws touching the jurisdiction, power, and authority of all courts with respect to subjects on which it is competent to legislate. It can also legislate on subjects in the Concurrent List. Similarly, a State Legislature has power to make laws touching the jurisdiction, powers and authority of all courts within the State with respect to all subjects enumerated in the State List and in the Concurrent List. But with respect to matters in the Concurrent List the Union Law normally prevails in case of conflict.

Power to Issue Writs

Before the commencement of the Constitution in 1950 only the High Courts of Calcutta, Madras and Bombay had the power to issue certain prerogative writs within their original jurisdiction. Article 226 of the Constitution now empowers every High Court, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari,* or any of them, for the enforcement of any of the Fundamental Rights and for any other purpose. The Constitution Forty-second Amendment Act, 1976, omitted the provision "for any other purpose" but the Forty-fourth Amendment Act, 1978 restored it.

The Forty-fourth Amendment Act inserted new clause (3) in Article 226 providing that where any party against whom an interim order, whether by way of injunction or stay or in any other manner is made on a writ petition without furnishing to such party copies of such petition and all documents in support of the plea for such interim order, and giving such party any opportunity of being heard makes an application for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks. If the application is not disposed of within the prescribed period of two weeks, the interim order shall on the expiry of that period, stand vacated.

Although the Supreme Court and the High Courts have concurrent jurisdiction in the enforcement of Fundamental Rights, the Constitution does not confer on the High Courts the special responsibility of protecting Fundamental Rights as the Supreme Court is vested with such a power. Under Article 32 the Supreme Court is made the guarantor and protector of Fundamental Rights whereas in the case of High Courts the power to enforce Fundamental Rights is part of their general jurisdiction. This special and unique position of the Supreme Court was emphasised by Justice Patanjali Sastri in *Romesh Thapar* vs. *The State of Madras.* It was observed, ".....Article 32 provides a 'guaranteed' remedy for the enforcement of those (fundamental) rights, and this remedial right is itself made a Fundamental Right by being included in Part III. This Court is thus constituted the protector and guarantor of Fundamental Rights and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringement of such rights."

Power of Superintendence

Every High Court has power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. In the exercise of the power of superintendence the High Court may call for returns from such courts, make and issue general rules and prescribe forms for regulating their practices and proceedings and prescribe forms in which books, entries and accounts shall be kept by the officers of these courts. The Constitution, accordingly, vests in each High Court, as the highest Court within its territorial jurisdiction, a special power and responsibility over all courts so that the judicial institutions in the State function properly and discharge their duties according to law. The power of superintendence over subordinate courts and tribunals is both judicial and administrative and the Constitution does not place any restriction on the exercise of this power, This point was made clear by Justice Nasir Ullah Beg of the the Allahabad High Court in *Jodhey* v. *State.* The Court observed, "On a proper interpretation of this clause it is difficult to my mind to hold that the powers of superintendence are conferred only on administrative matters. There are no limits, fetters or restrictions placed on the

power of superintendence in this clause and the purpose of this clause seems to be to make the High Court the custodian of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is met out fairly and properly by the bodies mentioned therein."

Transfer of Certain Cases

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, it may transfer the case to itself. After the case has come to the file of the High Court, it may dispose of the whole case itself, or may determine the constitutional question so involved and return the case to the court from which it had been withdrawn together with a copy of its judgment on such question and direct it to dispose of the case in conformity with such judgment. The Constitution, thus, denies to subordinate courts the right to interpret the Constitution so that there may be the maximum possible uniformity as regards constitutional decisions. It is, accordingly, the duty of the subordinate courts to refer to the High Court a case which involves a substantial question of law as to the interpretation of the Constitution and the case cannot be disposed of without the determination of such question. The High Court may also transfer the case to itself upon the application of a party in the case.

Court of Record

The High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. The two characteristics of a court of record are that the records of such a Court are admitted to be of evidentiary value and that they cannot be questioned when produced before any court, and that it has the power to punish for contempt of itself. Neither the Supreme Court nor the Legislature can deprive a High court of its power of punishing a contempt of itself.

Officers and Servants of the High Court

Article 229 empowers the Chief Justice of a High Court to appoint officers and servants of the Court for the efficient performance of its functions. The Governor may in this respect require the Court to consult the State Public Service Commission. The Chief Justice is also authorised to control the conditions of service of the High Court staff subject to any law made by the State Legislature in this respect. The administrative expenses of the High Court are charged on the Consolidated Fund of the State. In *Pradyot Kumar* vs. *The Chief Justice of the Calcutta High Court* (1956), it was held that "a power of appointment includes the power to suspend or dismiss." The Chief Justice has, thus, the power to suspend or dismiss any officer or servant from the service of the High Court.

SUBORDINATE COURTS

Subordinate Judiciary

Before the transfer of power the subordinate judiciary, particularly on the criminal side, did not command the unflinching confidence of the people for its independence and impartiality. Both the Indian Statutory Commission and the Joint Select Committee on Indian Constitutional Reform dwelt on this aspect and emphasised the paramount importance of an independent and fair-minded judiciary enjoying the confidence of the people. The Joint Select Committee laid special stress on the need for a competent subordinate judiciary in India "who are brought most closely into contact with the people, and it is no less important perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior judges."[6]

The Government of India Act, 1935, partially removed the existing defects on the civil side, but nothing tangible was done in the case of the magistracy on the criminal side. The District and Sessions Judges were appointed by the Governor, after consultation with a High Court, in his individual judgment.[7] Subordinate Civil Judges were recruited as a result of competitive examination and the government made rules, in consultation with the Public Service Commission and the High Court, defining the qualifications required. Their postings and promotions rested with the High Court. But in the case of District and subordinate Magistrates appointments were made by the Provincial Government under the provisions of the Code of Criminal Procedure and there was no obligation to consult the High Court. Nor was there any obligation to consult the High Court for their postings, transfers, promotions or for investing any of them with special criminal powers. The District Magistrate was also the principal District Officer, and the Collector. Am-

6. Joint Select Committee on Indian Constitutional Reform, Report (1934), para 337.
7. Government of India Act, 1935, Section 254.

bedkar correctly pointed out in the Constituent Assembly that the magistracy was sentimentally connected with the general system of administration.[8]

Originally, neither the Draft Constitution prepared by the Constitutional Adviser in 1947, nor the one prepared by the Drafting Committee in 1948, contained any specific provision on the subordinate judiciary. The intention at that time was that services of all types should not be included in the Constitution but were to be regulated by Acts of the appropriate Legislatures. The Conference of the Federal Court and the Chief Justices of High Courts held in March 1948, prominently discussed the omission to provide specifically for the subordinate judiciary in the constitution. The conference regarded it as most essential that the members of the subordinate judiciary should not be exposed to the extraneous influence of the party in power. In a Memorandum incorporating comments and suggestions on the Draft Constitution, Judges observed, "So long as the subordinate judiciary, including the District Judges, have to depend upon the provincial (state) executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties. It is, therefore, recommended that provisions be made placing exclusively in the hands of the High Courts the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including District Judges."[9]

The Drafting Committee accepted these suggestions. The Committee came to the conclusion that the time was appropriate for assimilating the civil and criminal justice and placing them equally under the control of the High Courts. The Drafting Committee, accordingly, drafted new provisions and inserted a new Chapter VIII in Part VI of the Draft Constitution containing Articles 209-A, 209-B and 209-C. These provisions regarding the Subordinate Judiciary came for discussion in the Constituent Assembly on September 16, 1949. In moving the new Article, Ambedkar made some changes. The promotion and posting of the District and Sessions Judges, which under the Draft Constitution, were the functions of the High Courts, were now made the responsibility of the Governors in consultation with the High Courts. Whereas in the Draft Articles, as first proposed, the High Courts were vested with full powers in regard to the posting and promotion of all members of the subordinate judiciary, the amended Articles confined this power of the High Courts to the subordinate civil judiciary alone. A new Article was added to provide that the procedure laid down for the civil judiciary would apply to the magistracy exercising criminal jurisdiction if the Governor by public notification so directed and that too subject to such exceptions and modifications as he might specify. In defending these changes Ambedkar observed. "The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provisions with regard to the appointment and the control of the civil judiciary by the High Court were also made applicable to the magistracy. But it has been realized that the magistracy is intimately connected with the general system of administration. We hope that the proposals which are now being entertained by some of the Provinces to separate the judiciary from the executive will be accepted by the other Provinces so that the provisions of Article 209-E would be made applicable to the Magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to elapse for the effectuation of the proposals for the separation of the judiciary and the executive. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the Provinces."[10]

The Constituent Assembly finally adopted the Articles proposed by Ambedkar and they became Articles 233 to 237 of the Constitution.

Appointment of District and other Judges

The Constitution divides judicial posts into two categories. The higher categories include District and Sessions Judges, Judges of the City Civil Courts, Additional District and Sessions Judges, Joint District and Sessions Judges, Assistant District and Sessions Judges, Chief Judges of Small Cause Courts, Chief Presidency Magistrates and Additional Chief Presidency Magis-

8. *Constituent Assembly Debates,* Vol. IX, p. 1571.
9. *The Framing of India's Constitution, Select Documents,* Vol. IV, p. 186.
10. *Constituent Assembly Debates,* Vol. IX , p. 1571.

trates. The second or lower category includes other civil judicial posts inferior to the post of a District Judge. Appointments to posts in the higher category are made by the Governor of the State in consultation with High Court exercising jurisdiction in relation to such State. No person, other than one already in the service of the Union or to the State, is eligible for appointment in this category except an advocate or a pleader of seven years' standing and is duly recommended by the High Court for appointment.

All appointments in the lower category, *i.e.*, other judicial posts inferior to the posts of a District and Sessions Judges, are made by the Governor of a State in consultation with the Public Service Commission and the High Court exercising jurisdiction in relation to such State. The practice that exists in most States is that the Public Service Commission conducts a competitive examination for recruitment to the judicial service of the State. The Commission prescribes certain minimum educational and professional qualifications for candidates competing for this examination. The required vacancies are filled up from amongst the list of successful candidates in order of merit. The selected candidates are given special training for a certain period before regular appointment to the service. Thereafter, they come under the superintendence of the High Court in the discharge of their responsibilities.

The control over District Courts and courts subordinate thereto has been vested in the High Court. Article 235 provides that "'the control over District Courts and courts subordinate thereto including the posting and promotion of and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of the District Judge shall be vested in the High Court....." The control by the High Court, accordingly, includes control over the posting, promotion and grant of leave to persons belonging to the judicial service and holding posts inferior to that of a District Judge. All subordinate courts, in brief, are placed under the administrative control of the High Court. Postings and promotions of District judges are made by the Governor in consultation with the High Court.

Criminal Courts

Every district in a State has both civil and criminal courts. On the criminal side there is a great measure of uniformity throughout India as the Code of Criminal Procedure applies to all courts. At the head of a district is the Sessions Courts presided over by a Sessions Judge. A Judge of a Sessions Court may pass any legal sentence, but a death sentence is subject to confirmation by the High Court. Sometimes he is assisted by Additional Sessions Judges. Subordinate to a Sessions Judge, who is also a District Judge, is a hierarchy of different grades of Civil and Criminal Courts. Besides hearing suits, the civil courts exercise jurisdiction over several matters such as arbitration, guardianship, marriage, divorce and probate. Quasi-judicial tribunals distinct from the ordinary courts have also been set up under certain special Acts for determining some types of civil rights. In some cases, appeals lie from their orders to the ordinary civil courts. But when no such right is given, they are subject to the constitutional right of superintendence of High Courts.

The constitution and organisation of criminal courts and their procedure are regulated by the Code of Criminal Procedure, 1973 which became operative on April 1, 1974, repealing the Code of Criminal Procedure, 1898. The Code of 1973 provides separate sets of magistrates for performing the executive and judicial functions. The Executive Magistrates are under the control of the State Government whereas Judicial Magistrates are under the control of the High Court. On the executive side, for each District there is a District Magistrate and under him work a number of Executive Magistrates. These Magistrates continue to deal with problems relating to the maintenance of law and order and the prevention of crime. On the judicial side, the judicial hierarchy of magistrates consists of the Chief Judicial Magistrates at the district level and the Judicial Magistrates of the first and second class. Broadly speaking, Magisterial functions, which are essentially judicial in nature, are the concern of the Judicial Magistrates. In metropolitan areas, with population of more than 10 lakhs, there are Metropolitan Magistrates who exercise larger powers for quicker disposal of cases.

The Code of Criminal Procedure 1973, has ushered in radical changes. The new Code provides for the separation of Judiciary from the Executive on an All-India basis. There is now complete separation from April, 1974 in all the States and Union Territories, except Jammu and Kashmir, Nagaland and tribal areas. Several other important changes designed to expedite the disposal of cases, to improve efficiency, to prevent abuses and to afford relief to the poor sec-

tions of the community have been brought about.

The system of appointing honorary magistrates or justices of the peace has been abandoned. Instead, a provision has been made for the appointment of retired or serving officers of Government as special magistrates with summary powers to try special categories of petty cases. The jury system has also been abolished.

Under the Code, every person arrested with or without warrant is required to be informed of the grounds of his arrest and in bailable cases has right to be released on bail. No person can be kept in police custody during investigation for a period exceeding fifteen days, even by an order of the court. No person can be kept on remand by order of the court for more than sixty days in any case. After the expiry of that period if the challan is not put up in a court, he is entitled to be released on bail. Provisions relating to bail have been liberalised and anticipatory bail can be granted in certain cases.

Another major change is the doing away with preliminary inquiry in sessions cases. The powers of revision conferred on superior courts cannot be exercised in respect of interlocutory orders. In order to ensure speedy disposal of cases the provision relating to compulsory stay of proceedings on the mere intention of the party to move for a transfer of the case has been omitted. But stay of proceedings can be obtained from superior courts in proper cases. Provision has also been made to afford an opportunity to the accused to make his representation, if any, on the punishment proposed to be given after conviction. The provision for demanding security from habitual offenders has been extended to anti-social offenders, such as, smugglers, blackmarketeers and persons, who default in provident fund contribution or commit offense under the Untouchability (offences) Act etc.

It has been compulsory to give a copy of the first information report to the informant. If a police officer refuses to record the information, the aggrieved party can send it by post to the Superintendent of Police, who will pursue the matter. Limits have been prescribed for the duration of security proceedings. Such proceedings shall ordinarily terminate, if they are not concluded within a period of six months. In cases where the offence is punishable with imprisonment for a period of two years or less, the investigation, if not completed within six months, can be stopped by a magistrate. Periods of limitation on a graded scale for launching criminal prosecutions have been provided in cases not punishable with imprisonment for more than three years.

Civil Courts

Throughout India, excepting the "Presidency" Towns–Bombay, Calcutta and Madras–the District Civil Court is presided over by a District Judge who is also the Sessions Judge. The Court of the District Judge is the principal civil court in the district and exercises both judicial and administrative powers. It exercises both original and appellate jurisdiction in civil cases and has wide powers under Special Acts, such as, Succession Act, the Guardians and Wards Act, the Provincial Insolvency Act, and the Divorce Act. The District Judge has the power of superintendence over subordinate courts exercising civil jurisdiction in a district.

Next to the District Judge's court is the court of a Civil or a Senior Subordinate Judge. This court has jurisdiction over cases of any amount. In the States where there are courts of Civil Judges they have no appellate jurisdiction whereas the courts of Senior Subordinate Judges excerise appellate power in minor cases. Below them are the courts of Subordinate Judges or Munsiffs as they are named in Bihar, Orissa, Uttar Pradesh and Assam. Subordinate Judges exercise appellate power in minor cases. Below them are the courts of Subordinate Judges or Munsiffs may be of the First or Second Class with varying jurisdiction. Appeals from the Subordinate Civil Courts lie, in the first instance, to the District Court if the amount involved does not exceed five thousand rupees. If it exceeds five thousand rupees, appeals lie to the HIgh Court. Rights of second appeal differ in different States, but there is a right of second appeal on a point of law, or on account of a substantial defect in procedure, or when the Court of first appeal differs on a question of fact from the court of first instance.

Small Causes Courts have been established in big towns for the expeditious disposal of cases not involving difficult questions of law and where the amount involved does not exceed two thousand rupees, or one thousand rupees, or five hundred rupees as the State Government may determine. Small Causes Courts follow summary procedure and the judgments are not ordinarily appealable though error in law may be rectified in revision.

In some States, Village Panchayats have been invested with power to try minor civil cases

involving movable property. The decisions of the Panchayats are not appealable.

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CHAPTER XVI

Services Under the Union and the States

How the Government Operates

Government, whether Union or State, operates through its Secretariat. The Secretariat,both at the Centre and in a State, is divided into Ministries and Departments among whom various subjects of governmental activity are distributed according to administrative convenience. Each Ministry is presided over by a Minister. In most of the Ministries of the Union Government there is at least one Deputy Minister, who is also a member of the Council of Ministers. But a Deputy Minister does not hold separate charge of a Ministry. His task is to assist the Minister, with whom he is associated, in his administrative and parliamentary duties and he may be compared to a Parliamentary Secretary in Britain; a "Junior Minister."

Besides the political heads of various Ministries of Government there are a number of permanent officials and clerical staff. At the head of each Ministry is the permanent Secretary, till recently a member of the Indian Civil Service, which is extinct now with the retirement of the last incumbent in March 1980, or Indian Administrative Service, who occupies a position of the very highest responsibility and importance. In fact, the Secretary is the key man in the Ministry who helps his political chief to see that the Ministry works efficiently and in particular direction. The Secretaries have in most cases been so long attached to their respective ministries that they acquire complete grasp of affairs within their own spheres and provide "a permanent brains trust" to the Ministers who are amateurs in the art of administration. Then, there are in the Ministry, possibly an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary, Assistant Secretaries, Superintendents and many others who do merely secretariat work of a purely routine character. Highest and lowest, these non-political agents of administration make up, in general, the Civil Service. Their tenure of office is permanent and they continue to function regardless of political changes. They are outside the domain of politics and this is the most important feature of the Civil Service. Lord Balfour has given a true picture of the position which Civil Servants occupy in Britain and it is applicable similarly to the Civil Service in India. The Civil Servants, wrote Lord Balfour, "do not control policy; they are for that very reason an invaluable element in Party Government. It is through them, especially through their higher branches, that the transference of responsibility from one party or one minister to another involves no destructive shock to the administrative machine. There may be change of directions, but the curve is smooth."[1] The Civil Servants, in brief, keep the wheels of governmental machine going and act as agents for the fulfilment of the policy of the party in office; the policy formulated during the election and formally endorsed by Parliament. They are a link between successive ministries, and repository of principles and practices which endure while governments come and go. Their rigid neutrality in the party political issues is the first code of their official conduct and they serve with equal fidelity whatever be the complexion of Government. All Civil Servants owe a temporary allegiance to the party in power and its programme, no matter what their bias or personal conviction. "The first thing," observed Viscount Attlee, "a Minister finds on entering office is that he can depend absolutely on the loyalty of his staff and, on leaving office, he will seldom be able to say what the private political views are even of those with whom he has worked most closely."[2]

Functions of a Ministry

The functions of a Ministry may broadly be said to be four. First, a Ministry must answer for its administration to the public. Administration does not operate in the vacuum. Since it translates policy into practice, the policy, which has received the approval of the people and endorsement of the Legislature, must be capable of

1. *Introduction to Bagehot's English Constitution*, p. XXIV.
2. "Civil Servants, Ministers, Parliament and the Public," *The Indian Journal of Public Administration*, April-June 1955, p. 96.

explaining itself. It means the accountability of administration to both the Legislature and the public. As this accountability is to be effected through those who are responsible for administration, the Ministry must provide to their political chief all relevant information so that he may be able to defend the actions of his Ministry in the Legislature and in the public forums. The work of the Ministry must, therefore, be conducted in such a way and its policy so framed that it should be capable of "articulate rational defence."

The second function of the Ministry is the drawing up of its policy. Policy, really, is formulated by the Cabinet. But all details of the working out of the policy so formulated and all routine business connected thereto are left to various Ministries of the Government. Very often the Ministry may itself suggest proposals within the framework of the policy of the government. Such proposals may either be the outcome of the Ministry's own administrative experience or may be the result of the directions given to it by its political chief. Whatever be its origin, the Ministry prepares the draft of the scheme, works out its details in accordance with the general policy determined by the Cabinet and consults the interests likely to be affected by it. If the scheme of the policy cannot be carried out within the framework of the existing law, then, it passes into the stage of proposals for a Bill. After its approval by the Cabinet it is drafted as a Bill to be laid before the Legislature at the Centre or in the States, as the case may be. The Bill is sponsored and piloted by the Minister-in-charge of the Ministry to which it relates and it is his responsibility to see it through. But the members of the Civil Service have to remain in attendance in the Legislature to assist the Minister with information and advice, whenever he is under fire in the House. It will, thus, be clear that even if the inspiration of the Bill may have come from the Minister, the preparatory work is the task of the Ministry and in great part the result of the influence exerted by the permanent Secretary. "The second thing a Minister will discover on entering office,"' wrote Attlee, "is that the Civil Servant is prepared to put up every possible objection to his policy, not from desire to thwart him, but because it is his duty to see that the Minister understands all the difficulties and dangers of the course which he wishes to adopt."[3]

Most modern statutes are "skeleton legislation." Legislatures legislate in general terms only, empowering the Ministries to give effect to the statutes. The rules and regulations so made have the force of law. The Ministry will, probably, concurrently with its preparation of the Bill work out regulations and subordinate acts of legislation and shortly after the Bill becomes law will issue them in the form drafted by the Law Department. In the application of the rules and regulations to specific cases, the Executive often assumes a quasi-judicial role. Innumerable kinds of judicial or quasi-judicial functions arise in the course of administration of public services, particularly those which affect the individual welfare of large sections of the community. In fact, the switching over of the functions of the State from negative to positive has necessitated it for Legislatures to act along two lines especially. In the first place, Legislature delegates a certain broad rule-making authority to the administration and, secondly, authority is conferred upon administration, in certain cases to adjudicate controversies. Decisions of these kinds are not truly judicial as they do not determine legal rights. They are, however, an extremely important means by which administration makes policy and shapes the nation's future within the framework of powers agreed to by Parliament.

Finally, the function of the Ministry is to implement policy. When the policy has been determined, presented and sanctioned, it becomes the duty of the permanent officials of the Ministry to see that it is faithfully carried out, even if the policy is not what they might have urged. Sir Warren Fisher cogently explained the principles on which Civil Servants in Britain act. It will be instructive to quote them here. Fisher says, "Determination of policy is the function of Ministers, and once a policy is determined it is the unquestioned and unquestionable business of the civil servant to strive to carry out that policy with precisely the same goodwill whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time, it is the traditional duty of the civil servants, while decisions are being formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may accord or not with the Minister's initial view. The presentation to the Minister

3. *Ibid*, p. 96.

of the relevant facts, the ascertainment and marshaling of which may often call into play the whole orgainsation of the Department, demands of the civil servant greatest care. The presentation of inferences from the facts equally demands from him all wisdom and detachment he can command."[4] There is little evidence in England of Civil Servants sabotaging the policy of the responsible political head of their Department.

R.K. Ramadhyani, writing on the Role of Civil Servants, says, "The civil Servant has thus the dual role of being the executive for the policy of a party and of being its interpreter; he is also in a good measure a maker of policy on its behalf. It is mainly in executing the policy of the party that conflict may arise; it can only be secondary in making new or subsidiary policy. A Civil Servant, exercising his democratic right of vote may have even cast his vote against the party which has come into power. He is now called upon to implement the policy of the party and very clearly he is in duty bound to do so, as he is not a ruler by himself but a public servant. It is his duty, therefore, to try to understand the policy of the party which has the mandate of the people and to implement it in the most faithful way. If he did not do so he would not be true to the democratic form of government which requires that for the time being the rule of the majority has to be accepted by the minority."[5]

Organisation of the Civil Service

The guiding principles of Civil Service orgainsation are very simple and obvious. They are three : a unified service, recruitment by open competition, and classification of posts into intellectual for policy, and clerical for mechanical work to be filled separately by separate examination. The division of Civil Servants into these two categories is essential for the proper performance and co-ordination of functions and for making policy responsive and responsible. In the clerical category may be placed all such work as is either of a simple mechanical kind or consists in the application of well-defined regulations, decisions and practices to particular cases. In the other category—intellectual for policy-—may be placed all such work as is concerned with the formulation of policy, the revision of existing practice of current regulations and directions, and the orgainsation and directions of the business of government.

The administrative class is pivotal and directing class of the whole Civil Service. "They are responsible," as Herman Finer says with reference to the British administrative class, "for transmitting the impulse from their political chief, from the statutes and declaration of policy, through the rest of the service and out to the public."[6] On this class rest, in India as in Britain, the responsibilities for formulating departmental policy and for controlling and directing the various Ministries. They are a body of advisers who find solutions that arise outside the normal routine of departmental work, supply suggestions which may form the ingredients of supreme policy and interpret regulations applying to difficult cases. The Directive Principles of State Policy enshrined in the Constitution, the realization of the objective of a Welfare State on a socialistic pattern and the prodigious effort involved in the proper execution of Five-Year Plans have created new responsibilities and onerous tasks for the whole administration and particularly for the administrative class. Their duties have become all-comprehensive and embrace planning, control and guidance of the entire economic as well as social life of the nation.[7] "When it becomes the central purpose and justification of government," wrote Sukhthankar, the then Cabinet Secretary, "while adhering to democratic values and methods to find a rich social and economic content for freedom to bring about equality of opportunity for all and to secure the maximum development of the human and material resources of a vast country, the administration faces new and immensely vital tasks." These new and immensely vital tasks "require the proper development of new arts of what may be called social and economic engineering."[8]

For the efficient performance of these heavy and arduous duties the administrative officers must necessarily possess a trained mental equipment of a higher order, capable of ready mastery of complex and intricate problems. They must also possess virtue of human sympathy. Prime Minister Jawaharlal Nehru reminded his

4. As quoted in Jennings' *Cabinet Government*, pp. 114-15.
5. *Hindustan Times*, New Delhi, May 10, 1957.
6. *The Theory and Practice of Modern Government*, p. 767.
7. Introduction to Public Administration in India, Report of a Survey by Paul H. Appleby.
8. Govind Ballabh Pant, "Public Servant in a Democracy," published in the *Indian Journal of Public Administration*, July-September 1955, p. 181.

audience consisting of civil servants at Kurnool, on December 9, 1955 of the exact purpose of the Services. "The Services", he explained, "as their name implies are supposed to serve, obviously. Serve. who ?—society, the people, the country. Why I say this, because the test, always, has to be how far the Services, whether as a whole or any individual member of them are serving the larger causes that society has, that the nation has."[9] The qualities exactly wanted in public servants must, therefore, be : initiative and enterprise, planning and organizing capacity, efficiency, honesty, loyalty, political neutrality, width of social outlook and the spirit of social service.

The British Civil Service is world famous for its political neutrality, impartiality and integrity. "The characteristic which has long been recognised in the British administrator," observed the Report of the Committee on the Political Activities of the Civil Servants, "and extolled as a special virtue is his impartiality and, in his public capacity, a mind untinged by political prepossession." But this traditional concept of political neutrality is undergoing, as S. Lall observed, "radical change under the impact of many factors some of which are common to all nations and others special to under-developed countries like India. The concept is being rapidly transformed, without a conscious realization and neutrality to a positive, non-partisan participation in the management of country's affairs."[10] The process of decision is no longer exclusively confined to the Ministers. It is diffused over the entire system of Government. The Ministers may ultimately mould and shape policies, but all such policies are being constantly readjusted "in a seamless web of a multiplicity of agencies." This complexity and dispersal of the decision-making process in the scale and scope of governmental activities (particularly in matters of welfare and State enterprise), the pressure thrown up by the democratic processes involved in the establishment of an egalitarian society and the increasing complexity of modern society. "The higher echelons of the Civil Services today not only advise and assist the Ministers in the formulation of policy; they indirectly influence decision." The dichotomy of the governmental process into politics and administration, *i.e,* 'decision' and 'execution' no longer exists.

Committed Bureaucracy

In his presidential address to the All-India Congress Committee's Calcutta session in December 1972, Shankar Dayal Sharma (currently Vice-President of India) described the present administrative machinery as being ill-suited to be an effective instrument of social change. He dwelt at length on the need for a complete overhaul of the administrative machinery which, he said, "does not have the necessary commitment and perspective" for putting through a plan for "the socialist transformation of our people's lives."[11] While commending the statement on the economic policy to the Subjects Committee of the Congress on December 27, 1972, the Planning Minister, D.P. Dhar, enunciated its "fundamental objective" as increased production in agriculture and industry. This process, he said, should go hand in hand with social justice. "We make a commitment that production in both the sectors has got to be achieved in a stipulated period. And for this we must not depend upon bureaucracy." Many results in the past, Dhar explained, "got bogged down in the quagmire of bureaucratic corruption and inefficiency, in spite of clear enunciation of objectives."[12] On the penultimate day of the Congress plenary session, December 28, 1972, the Prime Minister, Mrs. Indira Gandhi, stressed the need for administrative reforms, emphasizing that a system inherited from colonial rule could not keep pace with the changed mood of the nation.[13]

Clearly, an administrative structure that served British colonial needs is no longer relevant, but it makes no plea for a committed bureaucracy. A committed bureaucracy is possible only in a totalitarian regime, for a committed administration and democratic procedures are directly incompatible. Commitment in this context means a dedicated endorsement of whatever is prescribed by the party in power. But the most significant aspect of a democratic system is that it allows for an alternative government. A committed bureaucracy will then mean that the entire bureaucratic set-up would have to go with every change in the party complexion of the government. A politically neutral administration, re-

9. Published in the *Indian Journal of Public Administration,* October-December 1955, p. 289.
10. "Civil Service Neutrality," *Indian Journal of Public Administration,* January-March 1958, p. 1.
11. *Indian Express,* New Delhi, December 27, 1972.
12. *The Times of India,* New Delhi, December 29, 1972.
13. *The Statesman,* New Delhi, December 30, 1972.

sponsive to the policies prescribed by the party in power is quite a different thing from the kind of commitment which has been fashionable with the Congress leaders to demand from all sections of the government including the Judiciary. The Congress Parliamentary Party executive set up a nine-member committee "to consider problems of administration and suggest remedial measures. The Committee could not complete its labours before the Congress went out of office in April, 1977. Obviously, the emphasis of the Committee would have been on "commitment." But in democracy, no party remains in power perpetually and the concept of a committed bureaucracy presupposes that the administration is not at the disposal of any party other than one in power.

Classification of Services

In countries with a federal polity, it is usual for the Central Government and the Governments of the constituent units to have separately organsied services for the administration of subjects falling within their respective spheres of jurisdiction. In India, too, there are two sets of services, Central Services and State Services. The Central Services are concerned with the administration of Union subjects, such as, Foreign Affairs, Defence, Income Tax, Customs, Posts and Telegraphs etc., and the officers of these services are exclusively in the employ of the Union Government. The subjects within the jurisdiction of the States, such as public order, local Government, education, public health, agriculture, land revenue, veterinary, etc., are administered by the State Services and the officers of thse services are exclusively in the employ of their State Governments. In addition to these two classes of Services, the Constitution also provides for the All-India Services, a form of personnel organisation which has no parallel in any other federal country, except Pakistan. The All-India Services are common to the Union and the States and are composed of officers "who are in the exclusive employ of neither and may at any time be at the disposal of either." The Constitution at its commencement named two such Services, the Indian Administrative Service and the Indian Police Service.[14] It is further provided that other All-India Services, including an All-India Judicial Service,[15] may also be created by Parliament, if the Council of States (Rajya Sabha) declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so. A resolution was adopted by the Council on December 6, 1961, to the effect that it was necessary and expedient to the national interest that Parliament should by law provide for the creation of Indian Forest Service and it was constituted with effect from July 1, 1966. In 1965 the Council approved the setting up an Indian Agricultural Service and the Indian Educational Service. Although both these Services have not so far come into existence, but it does indicate the trend of administrative thinking in the sixties. "It is curious", says S.P. Aiyar, that "services which had been abolished because they were considered to be the creations of an imperial power and running counter to the genuine spirit of provincial autonomy were again sought to be resurrected."[16]

Ambedkar explained in the Constituent Assembly the reasons for making this extraordinary provision for the creation of All-India services particularly the Indian Administrative Service. He said, "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 one 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..... 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..... The Constitution provides that without depriving the States of their right to form their own civil service there shall be an all-India Service recruited on All-India basis with common qualifications with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the Union." The members of the Indian Administrative Service, therefore, man administration both at the Centre as well as in the States. Referring to three All-India Services—Engineering, Medical and Forests—the Home Minister, Lal Bahadur Shastri, said at Tirupati on September 25, 1962, that these three proposed services were being constituted to bring about homogeneity and unity in the

14. Article 312 (2).
15. Article 312 (1) as amended by the Constitution. (Forty-second Amendment) Act, 1976.
16. Maheswari, B.L. (Ed.), *Centre-State Relations*, p. 200.

administration. This was one of the recommendations, Shastri added, of the States Reorganization Commission.[17] The States Reorganisation Commission having bowed in 1956 before the demand for linguistic States, it sought to counter any tendency therein for disintegration by recommending new All-India Services. The Government of India zealously pursued it and made the State Chief Ministers to agree at a special 'integration' conference in August 1961, to the creation of three All-India Services—Engineering, Medical and Health and Forest—but they resisted the proposals for a fourth, for Education. The All-India Services, thus, came increasingly to be seen as a great force in national integration.

But after the 1967 General Election, the spirit for more State rights took a concrete shape when the Tamil Nadu Government appointed the Rajamannar Committee to examine the entire relationship that should subsist between the Centre and the States in a federal set-up with reference to the provisions of the Constitution of India. The Rajamannar Committee Report (1971) devoted one full Chapter to the Civil Services in India. It regarded with apprehension the nature of Article 312 which does not provide for consultation with the States prior to the passing of a resolution by the Council of States (Rajya Sabha) for the creation of an All-India Service, or at any other stage before constituting such a service. The Committee's main grievance was that Article 312 gives complete and final authority to the Union Government which can, if it so chooses, brush aside any suggestion made in that respect by a State Government. The Committee quoted with approval the views of the Study Team of the Administrative Reforms Commission that in a federal set-up "to have an All-India Service that serves the needs of the States but is controlled by the Union is an unusual feature." The Committee also recalled the statement made by the Joint Parliamentary Committee (1934) that the existence of All-India Services was incompatible with provincial autonomy.

The Indian Administrative Service

The Civil Service in India may be divided into three categories : the All-India Services, the Union Services, and the State Public Services. All-India Services are those specified in Article 312 (a) of the Constitution, namely, the Indian Administrative Service and the Indian Police Service. A few more have since been created. Union or Central Services include services in the various administrative departments of the Government of India such as the Indian Foreign Service, the Indian Revenue Service, the Indian Audits and Accounts Service, the Indian Railways Service, and the Indian Posts and Telegraphs Services. There are several engineering and other ministerial services.

The successor to the Indian Civil Service, the "steel frame" of the British Indian administration, is the Indian Administrative Service. The control and management of the Indian Administrative Service (IAS) as S.B. Bapat explained "is necessarily a joint co-operative affair."[18] The Service is organsied in the form of a number of I.A.S. cadres for each State. Recruitment to the Service is made by the Union Government on the result of a competitive examination conducted by the Union Public Service Commission. The officers recruited are allotted to different State cadres. The strength of each cadre is so fixed as to include a reserve of officers who can be deputed for service under the Union Government for one or more "tenures" of three, four or five years before they return to their State cadre. This arrangement is claimed to have the advantage of having at the disposal of the Union Government the services of officers with first-hand knowledge and experience of conditions in the States. And the States have officers, after their return to the State cadre, who are fully familiar with the policies and programmes of the Union Government.

There is yet another distinctive feature of the Indian Administrative Service. It is a multi-purpose Service composed of "generalist administrators" who are expected, from time to time, to hold posts involving a wide variety of duties and functions. At one time they may be responsible for the maintenance of law and order, at another time for the collection of revenue, regulation of trade, commerce or industry, and still at another they may be engaged in welfare activities like education, health, labour and development and extension work in agriculture and reconstruction. Thus, the administrators get a general training in more or less every branch of administration. There are two definite advantages of such a system of service. According to the arguments

17. *The Tribune*, Ambala Cantt, September 27, 1962.
18. "The Training of the Indian Administrative Service". *The Indian Journal of Public Administration*, April-June 1955, p. 119.

of Macaulay and Jowett, it is a better qualification for intellectual work than a special training, and that success in such a kind of training is likely to indicate desirable qualities of character. Secondly, it accounts for the liberal outlook of the administrators.

The method of recruitment to the Indian Administrative Service, the Indian Foreign Service and the Indian Police Service combines a written examination of high standard. Till recently the written test included compulsory papers and a number of optional papers, the precise mix being different for Indian Administrative Service and the Indian Foreign Service on the one hand, and the Indian Police Service on the other, selected from a group so made as to compel the candidates to go outside the range of subjects which they might have studied at the university level. The written examination was followed by a searching personality test. Candidates had to secure a certain minimum percentage of marks in the aggregate of compulsory and lower optional papers before they could be called for interview. For a period, it was the rule, that a candidate could be failed on personality test alone. A change was subsequently brought about and the interview marks were simply added to those of written papers. This method of recruitment, according to S.P. Bapat, ensured that the youngmen recruited to service "possess not only a high level of intelligence and academic learning, but an adequate measure of the qualities of personality and character, such as, discernment, clarity of thought and expression, intellectual integrity, self-confidence, self-possession, breadth of outlook and sense of moral and social values–qualities which must be looked for in persons holding responsible, administrative positions in any democratic welfare state."[19]

The scheme of examination hitherto followed has undergone a substantial change since 1979, primarily as a result of administrative compulsions. In 1976, 30,739 candidates applied for 679 vacancies in the Indian Administrative and Indian Police Service and the non-technical higher Central Services. Out of this number 17,645 candidates appeared at the examination out of which 1,157 were declared qualified for the interview and as a result of that 679 were finally declared recruited to these Services in accordance with the vacancies in each.

In order to get out of the difficulty of growing number of candidates when the vacancies were limited to around 700, the Kothari Commission was appointed on Recruitment Policy and Selection Methods in 1974. The Commission submitted its report in 1976 and recommended, which was accepted by the Government, a new scheme of examination consisting of two parts : a preliminary examination (objective type) and the Civil Service main examination which includes a written examination and interview. The preliminary examination, consisting of one compulsory and one optional papers, serves the purpose of a screening test. For example, in 1979 out of a total of 67,500 candidates at the preliminary test well over 60,000 were weeded out and in 1980 out of a total of 65,000 candidates 9,000 were declared eligible for the main examination. In 1981, roughly 8,600 wrote the Civil Service (Main) Examination. According to the UPSC Report 2.29 Lakhs applied for the Preliminary Examination and only 1.10 Lakhs (about a tenth of the number) appeared for the examination, and of it 11,250 qualified for the Main Examination. As regards the academic background of the aspirants to the I.A.S. in the recent years they have ranged from the professionally qualified like Chartered Accountants, Engineers from ITTs and even M.B.B.S. from prestigious institutions to doctorates in different disciplines. The first ranker in the I.A.S. for 1990 was on Engineering graduate from the ITT, Madras. This shows when there are a multiplicity of career options available in today's context, unlike the early Fifties and Sixties, the I.A.S. is still considered a coveted Service. The successful candidates at the Preliminary test sit for the Main Examination consisting of eight Papers and an interview. Of these eight papers, English, one language and General Studies (consisting of two papers) are compulsory and a candidate has an option to select two other subjects out of a long list of subjects taught at the Universities.

What the administration really needs today is leadership. "Leadership in administration," writes K.N. Butani, "translated into practical realities, implies that leaders must have 'spring' and vitality in them to be able to top the immense potentialities of human endeavour for creative activity. By dash, enthusiasm, and zest for work, they should be able to infect the entire team they command with a pioneering spirit of endeavour and towards feats of administrative achieve-

19. *Ibid.*

ment."[20] It, therefore, makes it imperative that men of the special merit who exhibit attributes of leadership by their decisiveness and dash at interview should be recruited in the administrative service. Mere possession of academic qualifications and passing the written examination is not enough. Interview unfolds the depth of a candidate and his potentialities in meeting situations and resolving matters which his diverse duties entail. There is, consequently, no merit in the argument about the futility of interview test.

But the Administrative Service has neither been able to maintain the high standard of quality for which it was reputed nor is it able to attract young shoots possessing the qualities an administrative officer must essentially possess–judgment, *savoir faire,* insight and fair-mindedness. The Service does not attract the youngmen who attain front rank eminence at the Universities. There is a "flight of quality personnel", as S. P. Aiyar puts it to the private sector, where salaries are handsomely lucrative, perquisites attractive, amenitives many, and there is freedom from all kinds of political pressure.[21]

This apart, the Administrative Service has not been able to strengthen the foundation of the Service. Political environment of the country has never allowed conventions and norms of administrative behaviour to evolve. The plague spot is the endless efforts of all State Governments to increase the quota of promotees from their own service and, consequently, diminishing the percentage of direct recruits to enter the service through the competitive examination. Another inroad was made by the special recruitment in 1956 and the short service commission personnel of the Armed Forces in 1962 to be followed in 1971, on the basis of a simplified three-paper test. The Study Team of the Administrative Commission observed in its Report that as a result "of this heavy dilution, the IAS has lost, or was never allowed to develop its character."

But the worst aspect of the policy-making in personnel administration is the decision of the Government to accept the introduction of all regional languages, included in the Eighth Schedule to the Constitution, as the media of examination. Until 1969, the only language allowed was English. After that the Union Public Service Commmission accepted regional languages as media of examination in two subjects, essay and general knowledge. Not more than one out of 10 candidates was found to use an Indian language instead of English in these two papers. The Union Public Service Commission had been insisting on a gradualist approach to the switching over to Indian languages, even if only as an option to begin with.

This gradualism was not intended to obstruct the fulfilment of the official commitment made in 1969 to promote the use of Indian languages in the Union Public Service examinations nor of the recommendations to the same effect made by the Kothari Commission, appointed in 1974 at the instance of the Union Public Service Commission and in consultation with the Union Government. The Union Public Service Commission's policy of gradualism aimed at doing enough spade work without endangering the standards not only of the examinations and of the services whose key personnel the examinations supplied and on which riveted the general administration of the whole country.

When the Janata Government, with strong pro-Hindi and anti-English elements, came into power, it decided to rush things during its term of office and accepted the Kothari Commission proposals and offered candidates the choice of writing all their papers in an Indian language, if they wished to. The Union Public Service Commission conducted its first Central Service examination (a collective name for all types of administrative examinations) in 1979. According to the Chairman of the Union Public Service commission, Dr. M.B. Sahre, out of 7,500 candidates who took the main examination, after weeding out 60,000 at the preliminary examination, only 14 per cent chose to write their papers in an Indian language; 86 per cent opted for English.[22] In 1981 roughly 8,600 candidates wrote the Civil Service (Main) Examination and as the Union Public Service Commission Report for 1981-82 presented to Parliament in March 1983, revealed that there was poor response to the option to answer papers in the regional languages. Tamil Nadu and the Hindi region both scored poorly, though their record was a shade better than that of most other languages. Overall, the number of candidates writing their public service examination in the regional languages is

20. "Leadership in Administration", *The Indian Journal of Public Administration,* October-December, 1956.
21. Maheshwari, B.L. (Ed.), *Centre-State Relations,* p. 208.
22. 12 per cent comprised Hindi-users and 2 per cent the remaining languages—34 candidates used Telugu, 26 Bangla, 13 Tamil and 8 Malayalam.

negligible.

These figures establish that the demand for "indigenisation" has no effective support from the candidates, who prefer, in the main, to go on using English. The demand for "indigenisation" really comes from the State Governments, all of which nurse a grievance about their States being "under-represented" in the Central Services and which see the use of Indian languages in the Union Public Service examinations as the short-cut to rectifying that "imbalance". In the absence of some kind of standardization or equivalence in multi-lingual marking that is acceptable to all the language groups, the use of Indian languages will lead to all the chauvinistic malpractices and each State Government will seek to pack the Service with entrants speaking the language of the State. This will mean, according to a former member of the Union Public Service Commission, "the funeral of the All-India Services."

Some members of the Council of States (Rajya Sabha) demanded, in a discussion on the 1977-78 Union Public Service Commission Report, change in the existing examination and recruitment methods used by the Commission. The Members who made this demand believed that the present system of choosing entrants favoured those who belonged to the "urban elite." Their contention was that the mode of examination and recruitment should be so designed that large number of intelligent youngmen and women from the rural areas might be able to join the main administrative services. One of the reasons that weighed with the Janata Government in permitting the option to use Indian languages for all the papers in the Central Services examinations was precisely to reduce the dominance of the "urban elite" in the Union Public Service Commission examinations. In 1977, the two-day Conference of Chairmen of State Public Service Commissions made an identical recommendation.

There can be no objection in principle to the recommendation that the recruitment to the superior Central and State Services should be on the basis of "intrinsic merit and potentiality" rather than articulation and sophisticated manners. But the ideal aimed at lowering standards to encourage rural entrants bristles with too many fallacies to create a strong and independent corps of civil servants capable of handling difficult situations, often taking unpopular decisions, resisting populist pressures and wisely advising politicians on the most effective course. It was, indeed, a welcome step when interviews were placed at par with the written examination, thereby depriving candidates from upper-class homes and English medium schools of their initial advantage. There is likely to be more depletion of the urban groups with the full penetration of regional languages as a medium of interviews.

Hitherto the age limits for recruitment were 21-24 years. The Janata Government raised it to 21-28 years ostensibly to benefit boys and girls for rural areas, who start education later than urban boys and girls. Since then the tinkering with the age limit had taken place arbitrarily, and in a surprising move the Narasimha Rao Government decided to raise the upper age limit for the Civil Service Examination to be held in 1992 to 33. The Kothari Committee which went into the question of age limit said that the entire process of examination should ensure identification of the really capable among the competing candidates and that the interest of these candidates would be adequately protected by having the upper age limit at 26 years with the usual relaxation for the Scheduled Caste and the Schedule Tribe candidates. Even in respect of number of attempts the Kothari Commission strongly urged that it must be restricted to two. The Public Services (Qualifications for recruitment) Committee appointed by the Government as early as in 1955 had said that the mental qualities as also the personality can be tested in one or at the most two examinations. Expert opinion also supports the view that the innate mental and analytical qualities may at best be tested in the first two or three examinations. Why exactly the number of permissible attempts should have been raised from three to four is again unclear. Ad hocism in a matter of such vital importance must be given up.

The rise in age defeated the basic idea of "catch them young" as a process of recruitment in the civil services. The study made at the Lal Bahadur Shastri National Academy of Administration made in 1982, revealed that most candidates selected for the Indian Administrative Service in recent years had a "national outlook," the average age of the probationer being 27, some of them tended "fixed opinions" and it occasionally became difficult to "mould them into the ethos of the service. A large number of candidates clearing the examination, taking the age of relaxation, were already married with two or three children. They no longer had the vigour and

enthusiasm one finds in those belonging to the age group of 20-25. They also lacked stamina and strength to undergo tough training and initial hardwork; they become risk conscious." This apart, they were more vocal, articulate, assertive, prone to defy authority and discipline and sometimes leading to gross misbehaviour which caused incalculable damage to the administrative system.[23]

Paralysis of Bureaucracy

An honest and efficient bureaucracy is an important and indispensable limb of a sound administration. Lord Macaulay tersely state this bare truth when he declared in British Parliament that "the character of the Governor-General (of India) is less important than the character of the Administrator by whom the administration is carried." Under a parliamentary system of government the character of the Minister is less important than the character of his civil servants. The civil services provide the framework of the administration of the country. The Ministers make policy decisions. In arriving at these decisions and looking to the consequences, they may, if they choose, seek the advice of civil servants, but the ultimate decision has necessarily to be that of Ministers. It is, however, in the area of implementation of these decisions that the role of administrators and other civil servants is of great significance. A feeling of confidence in civil servants is one of the essentials for drawing the best out of them. It had, to be ensured that this confidence is not impaired for the civil services keep the government as a going concern. It corrects the risks involved in decisions taken under pressure with its expertise and ascertainable knowledge. It oils the machinery of politics by relating the popular will to what a detached and disinterested experience indicates to be practicable. Its authority is that of influence, not that of power. It indicates consequences but it does not impose commands. Patel realised it and Nehru eventually veered round to the point of retaining the Indian Civil Service. They strove to enshrine the structure of an independent, impartial and irremovable civil service, a British legacy, in various provisions of Part XIV of the Constitution.

In the Nehru era all the proprieties and norms of minister-administrator relationship were maintained, though at occasions they too played favourites. They all operated on a limited canvas and the bureaucracy's capacity to fight back, to repair the damage, to restore the sanctity of the confidential reports and to uphold the norms of seniority remained, in the main, intact. In the States, however, the conditions were not ideal and a few of the officers, for example, N. Banerjee in Bihar and Dr. Nabogopal Das in West Begal, were compelled to resign in sheer disgust. But such occurrences were then exceptions rather than the rule, not *vice-versa,* as seems to be the case at present.

Now there is paralysis of bureaucracy and erosion in the morale of civil servants. A survey of administration reveals a painful study. Barrenness of ideas pervades civil service, the old dedication and efficiency have vanished, initiative is totally lacking, integrity and probity remain merely shadows of their past reality and general overall flabbiness and sycophancy prevails. To cover up their errors and misdeeds the political bosses make civil servants a target of attack for any shortfalls or mishaps in the administration. When they use harsh and unrestrained language to denigrate civil servants in the open it is not realised that such behaviour not only sullies the image of civil service but also seriously affects the capacity of officers, especially at the district level, to deal with piquant situation and difficult issues involved in matters of administration. Vallabhbhai Patel gave a note of warning in the Constituent Assembly when he said, ".....as a man of experience I tell you, do not quarrel with the instruments with which you want to work. It is a bad workman who quarrels with his instruments. Take work from them. Every man wants some sort of encouragement. Nobody wants to put in work when everyday he is criticised and ridiculed in public. Nobody will give you work like that."[24]

This parlous State of administration is a two-fold problem. First, the quality of bureacracy has been diluted over the years due to the decline

23. On October 4, 1981, during a trek to Badrinath as part of training, V.K. Singh, a probationer, was allowed to have got drunk, misbehaved with a woman colleague and even brandished with the fire arm. His male colleagues, who were eye witnesses, overpowered Singh before he could do more harm. Singh had earlier "withdrawn" from the National Defence Academy, Khadkwasla. The Director of the Mussoorie Administrative Academy, P.S. Appu, reported the matter to the Home Ministry, and insisted that the least ought to be done was to terminate his probation. The Home Ministry, under political pressure tried to shield Singh, thus impelling the Director to seek premature retirement in protest.

24. *Constituent Assembly Debates,* Vol. X, pp. 42 ff.

in the standards of education, inroad on administrative services made by special recruitment in 1956, 1962 and 1971, job reservation mania, raising the state service quota from 25 to 33 per cent with a still more clamour of rise, as particularly in Uttar Pradesh and all this leading to class exclusiveness, overstaffing, unionisation and proliferation of inservice rivalries. There is yet another factor and it has proved to be very harmful. during the British regime the supremacy of the Indian Civil Services was an undisputed fact. It was accepted by other "Imperial Services as a matter of course. But in Indpendent India the Indian Police Service did not accept the supremacy of the Indian Adnubstratuve Service. It was rather made the target of attack and abuse. Apart from the struggle between the two All-India Services for sharing in the plumb jobs, the class and caste antagonism has seriously embittered their relation and created bad blood through the entire bureaucratic labyrinth. No less important is the sharp controversy between the generalist and the specialists.

The second problem is the anxiety of the politicians to bend the civil service to their will and there has been no dearth of high-ranking civil servants enthusiastically willing to do the politician's behest for unworthy motives of their own. This phenomenon is not of recent origin, though it reached its apogee during the last few years It first appeared in the States and its pacesetters were Pratap Singh Kairon in Punjab and Bakshi Ghulam Mohammed in Jammu and Kashmir. Both Kairon and Bakshi had no respect for independent, honest and efficient administrators. They loathed rules and regulations and disdained the cardinal principle of administration in a democratic set-up that the civil servant "acts as the hands and feet of the minister and and the two must work in unison." They regarded them as tools and expected secretarial notings which should conform to their aims. Those who succumbed had their rewards; coveted assignments, important postings, out-of-turn promotions and sharing the spoils. Those who hesitated to fall in line had to pay heavy price—transfer to inconvenient positions and out of way places tantamount to demotion, or transfer without any assignment or were asked to proceed on leave, withholding of promotions and even suspension.

The Kairon-Bakshi culture soon spread to other States. The forces unleashed by them were strengthened further by the political instability ushered by the Fourth General Election in 1967 and the growing infighting within the Congress Party in States where it had managed to remain in power. Attempts were made to politicise the service and to identify some officials with one or the other of the political parties. The downfall drift thereafter was swift and was also dangerous in consequences. The well- entrenched practice that prevails now is that on the eve of election there are mass transfers of administrative heads of districts as also of police officers. These transfers are made on the assumption that some of them are regarded as more pliable and amenable to the wishes of the party bosses. In simple words, it means distrust of some public servants and expression of great confidence in others. This confidence or lack of it has nothing to do with merit, impartiality or efficiency of the officer concerned. It is a question of the equation he is likely to establish with his new masters and this in turn is influenced by how far he had involved himself with the previous Government and how far he is prepared to fall in line with the new one. With the change in the complexion of Government the Secretaries to the Government are also changed; sometimes wholesale. In common parlance it is described as "shake up". The fluctuating fortunes of parties effect the fortunes of individual officers and play a vital role in their careers. They would, therefore, instead of concentrating on the discharge of their official duties, get engrossed in playing their part to help one or the other political groups. The civil servant becomes a political activist.

This phenomenon hitherto confined to the States showed its ugly face at the Centre after the Congress split in 1969. Those who imported it into New Delhi were the champions of "committed bureaucracy" which had no use for rebels. The first systematic effort to put pliant persons in key positions in the Secretariat, intelligence services and public sectors was made during the Emergency. Hundreds of officials were shuffled around at the Centre and in the State ostensibly to give a dynamic push to Mrs. Gandhi's 20-point programme and the family planning drive. But the results were disastrous as the rulers of the day themselves admitted.

After March 1977 General Election it was hoped that the Janata Government would restore the balance as it enjoyed initially among a large section of the bureaucracy sympathy and respect since it was committed to dismantle the coercive apparatus of the Emergency. But the way it sought to browbeat the top bureaucrats into con-

venient decisions put even the so-called excesses of the Emergency into shade. Scores of officers were arraigned before the Shah and other Commissions and, in a vast majority of cases, the whole operation had the trappings of witch-hunt. "The scandalous manner in which so upright and outstanding a civil servant as Mr. B.B. Vohra has been treated" writes Inder Malhotra, "will always remain an indictment of both the Janata and Lok Dal Governments."[25]

Despite the assurance given by Mrs. Gandhi immediately after the change of Government in January 1980, to the Secretaries of various economic Ministries that she would turn the new leaf nothing was done to restore the self-confidence and self-esteem of civil servants at the top who were afraid of taking even routine decisions during the three years of Janata-Lok Dal rule. On the other hand, politicalisation of the bureaucracy was carried a stage further. The new Government acted with alacrity in making widespread changes in key posts in various Union Ministries, the public sector, the Delhi Administration and such sensitive organisations as the Intelligence Bureau,, the CBI and the Central Reserve Police. The Civil Servants put under "cloud" were those who were associated with the processing of cases against Mrs. Gandhi, Sanjay Gandhi, and her colleagues or were working in the Commissions of inquiry set up against her or her colleagues. The then Union Home Minister, Gyani Zail Singh, designed a "loyalty" test to screen some senior officials. Some thirty top men were forced to proceed on leave or were not given any alternative assignment. They drew their salaries from the public exchequer but had no job for months together. Civil Servants who were conspicuously associated with Emergency and who later stood firm in their loyalty to Mrs. Gandhi were rehabilitated. While some had been given the post held prior to 1977, others were promoted or given coveted assignments.

According to B.K. Nehru at the root of maladministration from which India is suffering is the "Varna Sankar" that has been caused "by increasing practice of ministers not to concern themselves so much with polity as with individual cases." He assigns various reasons why Ministers are mostly engaged in and prefer to decide individual cases. One of the important reasons, he emphasizes, is "the financial corruption prevalent among many of the several hundred ministers who are normally in office in this country has reached scandalous proportions. A minister who refrains from deciding individual cases is likely to remain poorman."[26] It is a matter of common knowledge and belief and the young entrepreneurs trumpet it openly and without any reservation that there is no transaction involving a Government department, no issue of a licence for setting up a new factory, starting a new industry or expanding an old one, no permit for export, no dealing with any commercial undertaking needing sanction of the Government in which the politician concerned does not insist on a substantial gift for his party and his own pocket. Bureaucrats, of course, claim their due share. The Ministers expect secretarial notings which conform to their aims and civil servants demand price for this piece of dishonesty. There is *quid pro quo*. Those who do not fall in line earn the displeasure of their superiors and have to pay for it; the familiar transfers, withholding promotions or even suspension. Dr.N.B. Prasad, former Chairman of the Natural Gas Commission, the man who put India on the international oil map, was transferred when he dared to disagree with the Janata Petroleum Minister H.N. Bahuguna on the purchase of a drilling rig from Holland. When Congress returned to power in 1980, Prasad as Power Secretary was again in trouble. This time he objected to the import of two old power plants from France annoying a powerful ruling party leader. Prasad was quickly transferred and he eventually resigned from Government service in disgust.

There are two other important factors that essentially contribute to this dismal state of affairs. Here bureaucracy plays the positive role. The reason for creating All-India Services, particularly the Indian Administrative Service, Ambedkar explained to the Constituent Assembly, was that certain posts in the administrative set up of the country "are strategic from the point of view of maintaining the standard of administration...and members of which (All-India Services) alone could be appointed to these strategic posts throughout the Union." The Service has been organised in the form of a number of I.A.S cadres for each State. The strength of each cadre is so fixed as to include a reserve of officers who can be deputed for service under the Union Govern-

25. Malhotra, Inder, "Ministers vs. Civil Servants," *Sunday Review, The Times of India,* New Delhi, June 1, 1980.
26. Nehru, B.K., "Decline of the Civil Service," *The Tribune,* Chandigarh, April 28, 1980.

ment for one or more tenures of three, four or five years before they return to their State cadre. The advantage claimed for such an arrangement is that the Union Government has at its disposal the services of officers with first-hand knowledge and experience of conditions in the States and when they return to their State cadre, the States have officers who are fully familiar with the policies and programmes of the Union Government.

But the Civil Servants themselves have striven to wreck this noble ideal of the Constitution makers. There is a craze to stay at New Delhi and once an officer comes on a tenure he seldom likes to go back to his State. Inder Malhotra writes,"The late Sir Girja Shankar Bajpai, the archetypal civil servant if ever there was one was nearly driven to tears in the early fifties when the found that most of his colleagues would do almost anything to stay on in Delhi rather than to go back to the State."[27] They manipulate and manoeuvre with politicians to ensure their stay at New Delhi and the Ministers oblige them because they are always willing to bend over backwards to do the politicians' behest for unworthy motives of their own. B.B. Vohra extensively quoted in support of his contention that he was let down as badly by his peers as by Mr. Morarji Desai and Mr.Charan Singh. The process was reversed by Rajiv Gandhi. The Prime Minister directed all the Ministries that officers for more than five years' stay in New Delhi should be reverted to their State Cadres and banned re-employment of superannuated persons and if they were already in employment no further extension should be given and where possible their services terminated. But it did not work well in the desired direction and the Prime Minister himself reversed his own scheme in the back gear and once an exception was made it snowballed into full action. The position was not exactly so bad as before, but there was no well-defined norm to be adhered to. Rajiv Gandhi created history when he sacked in pubic the permanent head of the Indian Foreign Office, A.P. Venkateswaran.

Then, it is passion with almost all top-ranking civil servants approaching the age of superannuation, to explore all possibilities for an extension and if it was not possible, then, either to get a diplomatic assignment or a place in some State Raj Bhavan. When there is a scramble for extensions or diplomatic or gubernatorial assignments,the senior civil servants are easy tools in the hands of Ministers to dance to their tune They become abject sycophants and without any qualm of conscience say yes to every suggestion without any regard to consequence.

During the seventh Gobind Ballabh Pant memorial lecture which B.K. Nehru delivered at India International Centre, New Delhi, he described civil servants in India a plaything of politics who "instead of administering the law are being compelled to carry out the wishes of ever changing Ministers." He tore apart any myth that might be existing that civil servants in India were being allowed to perform their roles. He analysed the causes of increased ministerial interference in the work of civil servants and suggested, as remedial measures,a procedure laid down through legislation for appointments, posting and transfers of civil servants; increasing their salaries substantially to make them impervious to corruption and "reprofessionalising" the service, "The canker of careerism, sycophancy, indiscipline, factionalism,lack of integrity and pursuit of self-interest which is attacking the system will automatically largely disappear when the political interference from which it emanates has been eliminated," he explained.

In his letter addressed to the Bihar Chief Minister Jagannath Mishra, refusing his promotion to the Commissioner's grade in the Indian Administrative Service, A.K. Chatterjee wrote on September 23,1981,"An honest and upright public servant finds himself absolutely irrelevant in the present set-up. He becomes a meaningless label in a system based on favouritism and geared to serve the interests of political functionaries and their dear and near ones alone." Chatterjee's protest acted as a catalyst to the growing resentment among the civil servants against political interference, and the Bihar I.A.S. Association passed a resolution expressing solidarity with him and asking other services to also protest "against the dominance of political bosses which tended to incapacitate the public servants from giving free and fearless advice." A.V.R. Reddy in September 1982 came out with a blistering indictment of the Andhra Pradesh politicians. Parakh, another Indian Administrative Service Officer, who succeeded Reddy and was replaced by the Telugu Desam Government in 1983, followed in his predecessor's footsteps. His statement was less provocative,but he made the point

27. Malhotra, Inder, "Ministers Vs. Civil Servants" *Sunday Review, The Times of India,* New Delhi, June 1, 1980, p. 1.

about the wisdom of frequent and abrupt transfers of officials in key positions and its impact on the morale of the civil service as a whole.

These isolated cases permanently bring into focus the disturbing indications of the decay of India's political system. It also makes clear that there are capable civil servants who believe firmly in the concept of trusteeship which the British Government inculcated in Indian Civil Servants.[28] Young I.A.S. officers, full of idealism, hopes and new ideas,soon encounter the pernicious power and influence of the deceitful political operative and his ubiquitous businessman-contractors friends; it is an encounter the bureaucrats invariably lose. Under the circumstances the civil servants who retain the courage to resist deserve full support. If it is more of them,it should act as a curb on politicians who run riot.

Recruitment and Conditions of Service

"The method of responsible Government to be successful in political working," observed the Joint Select Committee on Indian Constitutional Reform, 1933-34,"requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience,secure in the positions, during good behaviour, but required to carry out the policy upon which the Government and Legislatures eventually decide."[29] So long as politicians can influence in any vulgar sense appointments and promotions, there is, as Ivor Jennings says,"a risk of toadying flattery and self-seeking" and the mind of the Minister will always be devoted to the need of rewarding his followers. The whole administration must,under the circumstances, deteriorate both in tone and efficiency and the services may be depleted of able, efficient, honest and experienced persons. The method of selection for the various posts in the public services and their conditions of service are, therefore, matters of supreme importance in order to secure a continuous inflow of competent men of the right type.

The Drafting Committee thought it advisable that detailed provisions relating to the services should be regulated by Acts of the appropriate Legislatures rather than by constitutional provisions.[30] The Constituent Assembly accepted this recommendation of the Drafting Committee and the Constitution lays down certain general provisions, leaving the detailed rules of recruitment and conditions of service of persons serving the Union and the States to be determined by the appropriate Legislatures.[31]

The Constitution provides that except where a different provision is made, as in the case of the Judges of the Supreme Court and of the High Courts,the tenure of office of all persons holding Government posts under the Union, including posts connected with defence services, is during the pleasure of the President, and any person who is a member of the Civil Service of a State or holds any post under a State holds office during the pleasure of the Governor. Dismissal or removal of a Civil Servant cannot be effected by an authority subordinate to that by which he was appointed. And no dismissal, removal, or reduction in rank of a Civil Servant can take place until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him. But this requirement is not necessary:

(i) where dismissal or removal or reduction in rank takes place as a result of the conviction of a public servant on a criminal charge; or

(ii) where the authority empowered to dismiss or remove a person or reduce him in rank is satisfied that for some reason,to be recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of stating his case; or

(iii)where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give such an opportunity to that person."

28. Every warrant of appointment issued by the British Crown carried the preamble, "Our Trusty and Wellbeloved....." Every public servant in Britain is beloved of the Crown and enjoys its trust. In return, he carries the burden of trusteeship of the task assigned to him and is, therefore, expected to discharge his duties bearing faith in his trust. The officers of the British empire in India were appointed by Royal warrant and, consequently, carried with them the trust reposed in them. The officers of the East India Company bore no such trust and the notoriety they gained for their rapaciousness and preference for private profit over public gain bears the testimony of history and needs no recounting.

29. Vol. I, para 274.

30. *The Draft Constitution of India,* xi, para 16.

31. Article 309. Also refer to Entry 70 of the Union List and Entry 41 of the State List, Schedule VII.

If any question arises whether it is reasonably practicable to give to any person an opportunity of showing such cause, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be,shall be final.

The Constitution (Forty-second Amendment) Act,1976, denies to Government servants the opportunity to make a representation at the second stage of inquiry against the penalty proposed to be imposed. Article 323-A empowers Parliament to make a law for adjudication of service disputes by administrative tribunals. Service matters have,therefore,been taken outside the jurisdiction of the courts. But the power of the Supreme Court under Article 136 to grant special leave to appeal will remain.

Public Service Commissions

"Wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it so far as possible from political or personal influences and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which governments, of whatever political complexion, may give effect to their policies."[32] Public Service Commissions are fundamental to the very conception of a democratic government, for they perform a very important and vital function in a democracy. Their primary objective is to establish a Civil Service free from personal and political influence and to secure to civil servants protection from victimization and injustice. They provide effective instruments by which governments professing different political faiths and pursuing different ideologies can give effect, through an efficient and impartial Civil Service, to their programmes and policies. Independence, impartiality and integrity constitute the essential characteristic features of a true and efficient Public Service Commission.

The Government of India Act,1919,provided for the establishment of a Public Service Commission in India. But no action was taken thereon. The Royal Commission on Superior Civil Services (Lee Commission),1924,gave particular attention to the matter and recommended that the statutory Public Service Commission envisaged in the Government of India Act,1919,"Should be established without delay."[33] It was only in October 1926, that a Public Service Commission was established at the Centre. In 1929, Madras established its own Public Service Commission. The Punjab Legislative Council enacted legislation for the establishment of a Commission, but it could not come into existence due to scarcity of finances.

The Indian Statutory (Simon) Commission recommended the establishment of Public Service Commission in all the Provinces."We have no doubt", the Commission observed, "of the necessity for the establishment of Provincial Public Service Commissions if an efficient and loyal public service is to be maintained.[34] They thought that the protection of the services from political influence was an essential condition of the constitutional advances they recommended. It was, accordingly, suggested that provision should be made in the Government of India Act that, if any Provincial Legislative Council did not pass within a prescribed period an Act for the establishment of a Public Service Commission,with a constitution and functions approved by the Secretary of State in Council,the Provincial Government "shall be required (1) to conduct its recruitment through the agency of the Central Public Service Commission;(2) to submit appeals from members of the provincial and subordinate services to the same body; and (3) to accept and apply the same convention in regard to the Commission's recommendations as are accepted by the Government of India."[35] The Government of India Act, 1935, accordingly, provided that "there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province." Provision was also made whereby the same Public Service Commission could serve the needs of two or more Provinces jointly.

The Commission was purely an advisory body. Appointments to the Commission were made by the Governor-General or Governor, as the case might be, acting in his discretion. At least half of the number of members of a Commission were to be from the services who had held office under the Crown for ten years or more. The tenure of office of the members and conditions of their

32. *Report of the Royal Commission on the Superior Services in India (Lee Commission),* para 24.
33. *Ibid.*
34. *Report of the Indian Statutory Commission,* Vol. II, para 339.
35. *Ibid.* Bombay and Sind had a Joint Commission as also Punjab and North-West Frontier Province, and one Commission served Bihar, Orissa and the Central Provinces.

service were determined by regulations made by the Governor-General and Governors. The functions of the Commissions were enumerated in the Act itself but the Governor-General and Governor acting in their discretion could exclude any matter from the purview of the Commission concerned. It may, however, be noted that in practice all services functioning in the sphere in which the Governor-General or a Governor acted in his discretion were excluded from the purview of the respective Commissions.

The Constituent Assembly had,thus, before it the Government of India Act,1935, outlining the composition and functions of the Public Service Commissions together with fairly well-established traditions relating to their working. The Union Constitution Committee and the Provincial Constitution Committee did not find it necessary to go into their details and recommended that provisions regarding the Public Service Commissions should be on the lines of those in the Government of India Act,1935. But there was one important difference in the recommendations of these Committees. Whereas the Union Constitution Committee had recommended that the appointment of the Chairman and members of the Federal (Union Public Service) Commission should be made by the President on the advice of his Ministry, the Provincial Constitution Committee had suggested that Provincial (State) Commission Members, including the Chairman, should be appointed by the Governors acting in their discretion, However, in presenting the Report of the Committee to the Constituent Assembly on July 15,1947, Sardar Vallbhbhai Patel said that the appointment of the Chairman and members of the Provincial (State) Public Service Commissions would generally be made by the Governor on the advice of his Cabinet or Ministry.[36]

In pursuance of the Reports of the Union Constitution Committee and the Provincial Constitution Committee the Constitutional Adviser in his Draft of October 1947, included provisions for Public Service Commissions which closely followed the Government of India Act, 1935. The Drafting Committee in its Draft of February, 1948,adopted the Constitutional Adviser's Draft. In May 1948,a conference of the Chairmen of all the Provincial Public Service Commissions and the Chairman and members of the Federal Public Service Commission was held and some suggestions were made for incorporation in the Constitution.[37] The more important of these suggestions were:

(1) Provision should be made in the Constitution that the procedure prescribed for the removal from office of Judges of the Supreme Court and High Courts and the Comptroller and Auditor General would be followed also in the case of the members of the Public Service Commissions.

(2) Following the Government of India Act,1935, the Draft had provided that less than one-half of the number of members of a Public Service Commission should be persons who had held public office for at least ten. years. The conference suggested that in order to provide for the representation of all the interests involved,this percentage should be reduced to one-third.

(3) Provision should be made that the conditions of service of member of a Public Service Commission should not be varied to his disadvantage during his tenure of office.

(4) The Chairmen of Public Service Commissions like the members, be eligible to hold office after retirement with the permission of the President or Governor as the case might be. The conference thought that while all restrictions on the future employment of Chairman and members of the Commission should not be abrogated,the services of such experienced men should, if necessary, be available to the Government.

(5) Before the President or the Governors made regulations excluding any matter from the purview of the Public Service Commission,the appropriate Commission itself should be consulted.

(6) While it could not be made obligatory on the Government to accept the advice of a Commission in all cases, provision should be made for reports of the Public Service Commissions to be compiled annually and laid before the appropriate Legislature, and in particular for a list of cases to be placed before the Legislature where the advice of the Commission had not been accepted.

These suggestions were cast in the form of draft amendments and the Drafting Committee considered them together with the views of the

36. *Constituent Assembly Debates*, Vol. IV, p. 581.
37. *The Framing of India's Constitution, Select Documents*, Vol. IV, p. 411.

Ministry of Home Affairs and the Law Ministry. The amendments proposed by the Drafting Committee were considered by the Constituent Assembly on August 22 and 23, 1949. In the course of revision Articles relating to the Public Service Commissions were renumbered 315 to 323.

Appointment and Terms of Office

The Constitution provides for a Public Service Commission for the Union and a Public Service Commission for each State. But if the Legislatures of two or more States authorize it by resolution, Parliament may establish a Joint Commission for those States. The Union Public service Commission may perform the functions of a State Public Service Commission at the request of the Governor of a State, and with consent of the President.[38] The Union Territories are served either by the Union Public Service Commission or by the Public Service Commission of an adjoining State.

The Chairman and other members of the Union Public Service Commission or a Joint Commission are appointed by the President and in the case of a State Public Service Commission by the Governor of the State. One-half of the members of a Commission, Union or State, must have held office for at least ten years either under the Government of India or under the Government of a State. A member holds office for six years or until he attains, in the case of the Union Commission the age of sixty-five years and in the case of a State Commission or a Joint Commission the age of sixty-two years whichever is earlier. A member of a Public Service Commission is, on the expiration of his term of office, not eligible for reappointment to that office.[39] The Chairman of the Union Commission is ineligible for further appointment either under the Government of India or under the Government of a State. But a member of the Union Commission is eligible for appointment as Chairman of the Union Commission or Chairman of a State Commission. The Chairman of a State Commission is eligible for appointment as Chairman or a member of the Union Commission or Chairman of any other State Commission. A member of a State Commission is eligible for appointment as Chairman or a member of the Union Commotion or as Chairman of that or any other State Commission. None of them, however, is eligible for any other employment either under the Union Government or under the Government of a State.[40]

Employment under Government has been interpreted to mean employment which is paid by the Government. The Universities and public corporations are independent legal entities with their own independent financial resources and, accordingly, employment under such bodies is not employment under Government. Some States have appointed retired persons or who had resigned from the Public Service Commissions to statutory bodies. In the case of universities interchange between the Vice-Chancellorship and membership of a Public Service Commission has almost become a regular feature. A new precedent was set in April, 1977, when the President appointed Raghukul Tilak, a retired Chairman of the Rajasthan Public Service Commission, as Governor of Rajasthan. The explanation offered was that a Governorship was not employment under Government as the salary of the Governor was paid out of the Consolidated Fund. The Supreme Court upheld the contention of the Union Government and ruled that the appointment of Raghukul Tilak was in order and, therefore, valid. A.K. Kidwai, former Chairman of the Union Public Service Commission, was appointed Governor of Bihar in1978,after the resignation of Jagan Nath Kaushal.

The number of members constituting the Union Public Service Commission and the conditions of their service, or of a Joint Commission, are determined by the President and in the case of State Commissions by the Governor by regulations.[41] It has since been decided that there shall be six to eight members of the Union Commission and usually three for the State Commissions. The conditions of service of a member of a Public Service Commission cannot be varied to his disadvantage after his appointment.[42] The entire expenses of the Commission, including the salaries and allowances of its members, are charged on the Consolidated Fund of India and in the case of a State Public Service Commission on the Consolidated Fund of the State.

The Chairman or any other member of Public Service Commission may be removed from his office by order of the President on the

38. Article 315.
39. Article 316.
40. Article 319.
41. Article 318.
42. Proviso to Article 318.

ground of misbevariour and the Constitution prescribes the procedure to prove misbehaviour.[43] The ground or grounds of misbehaviour are referred to the Supreme Court by the President. The Supreme Court then conducts the inquiry in accordance with the procedure prescribed under Article 145 of the Constitution and submits a report to the President . Pending inquiry in the Supreme Court, the President in the case of the Union Commission or a Joint Commission and the Governor in the case of a State Commission may suspend from office the Chairman or any other member of the Commission against whom a reference has been made to the Supreme Court.

The President may by order remove from office the Chairman or any other member of a Public Service Commission on any of the following grounds:

(a) if he is adjudged an insolvent; or
(b) if he engages during his term of office,in any paid employment outside the duties of his office; or
(c) if he is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

If the Chairman or any other member of a Public Service Commission becomes in any way concerned or interested in any contract of agreement made by or on behalf of the Government of India or a State Government or in any way participates in profits accruing thereof or in any benefit or emolument arising therefrom except as an ordinary member of an incorporated company,he shall be deemed to be guilty of misbehaviour under Article 317 (1).

There was no provision in the Government of India Act,1935, for the removal and suspension of members of the Public Service Commissions. All such matters were governed by rules framed by the Governor-General and the Governors acting in their discretion. Article 317 of the Constitution now empowers the President alone to remove members of a Public Service Commission. He does so by his Order, without any formality, when a member is adjudged an insolvent, or he engages himself in any other employment or he is deemed unfit to continue in office owing to infirmity of mind. But removal on grounds of misbehaviour involves the observance of certain procedure as provided in the Constitution. The Constitution also provides an instance of misbehaviour.

Functions of Public Service Commissions

The Constitution prescribes the following functions of the Public Service Commissions, both Union and States.[44]

(1) to conduct examination for appointments to the Union and State Services respectively;
(2) to assist the States in framing and operating schemes of joint recruitment for any service for which candidates possessing special qualifications are required, if two or more States make such a request to the Union Public Service Commission;
(3) to give advice:
  (a) on any matter referred to them relating to methods of recruitment to civil services and for civil posts;
  (b) on the principles to be followed in making appointments, and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
  (c) on all disciplinary matters including memorials or petitions on such matters;
  (d) on a claim made by any person who is serving or has served under the Government of India or a State Government that the costs of defending legal proceedings against him in respect of acts done or purporting to be done in the execution of his duty should be borne by the Government; and
  (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government in a civil capacity and any question as to the amount of any such award.

(4) any other matter referred to a Public Service Commission which the President or, as the case may be, the Governor of a State may refer to them.

Normally, a Public Service Commission must be consulted in all matters relating to methods of recruitment,on the methods to be followed in making appointments, promotions and transfers from one service to another, on the suitability

43. Article 317 (1).
44. Article 320.

of applicants, on disciplinary matters affecting any person in a civil capacity, on claims submitted by civil servants for payment of costs incurred in defending legal proceeding and compensation for injuries sustained in the execution of their duties and for the award of pensions. But the Constitution also empowers the President and the Governors to make regulations specifying the matters in which, either generally or in particular circumstances, the Commission may not be consulted.[45] No reference need be made to the Public Service Commission on matters relating to the reservation of appointments of posts in favour of backward classes, Scheduled Castes and Scheduled Tribes.[46]

In 1961 an amendment was made which provided, "It shall not be necessary for the President to consult the Commission in any case where he proposes to make an order of dismissal, removal or reduction in rank after being satisfied that such action is necessary in the interest of the security of the State." In 1962, following the Proclamation of Emergency similar amendments were made curtailing the advisory functions of the Commission. All regulations made by the President or the Governor specifying the matters in which it is not necessary to consult the Commission are to be laid before the appropriate Legislature and are subject to legislative control and modification.[47]

Under Article 321 of the Constitution, the functions of the Union or a State Public Service Commission may be extended by an Act of Parliament or, as the case may be,by a State Legislature. Such an Act may bring within the scope of the functions of the Commission matters connected with the services of public institutions, such as, Public corporations and local bodies, under the Union or a State Government. The need for bringing such institutions within the purview of the Public Service Commissions is undeniable in view of the greater emphasis on the utility of public corporations and such other institutions in the context of the increasing activities of a Welfare State. These institutions employ an ever-increasing number of officials.

Independence of the Commissions

The Constitution contains the following guarantees to secure independence of the Commissions in the discharge of their duties:

(1) The Public Service Commissions are constitutionally created and are in no way subordinate either to the Executive or the Legislature. Parliament can neither abolish them nor alter their powers and functions, except by following the process of constitutional amendment which is a difficult and cumbersome procedure.

(2) The term of office of a member is fixed by the Constitution and no one is eligible for reappointment to that office on the expiration of his term.

(3) Removal or suspension of a member can only take place in accordance with the procedure and for reasons prescribed in the Constitution.

(4) The conditions of service of a member can not be varied to his disadvantage after his appointment. The salaries and allowances of the members and staffs of the Commission as well as expenditure incurred on their upkeep are charged on the Consolidated Fund. The Commissions are, accordingly, not subject to the vote of Parliament or a State Legislature, and, consequently, not subject to the vagaries of fluctuating majorities.

(5) In order to avoid the suspicion that promise or prospects of further employment under the Government might operate or be used to influence the Judgment of the members of the Commissions, the Chairman and members, on ceasing to hold office, become ineligible for further employment under Government except:

(i) that the Chairman of a State Commission is eligible for appointment as Chairman or a member of the Union Commission or as Chairman of any other State Commission;

(ii) that a member of a State Commission is eligible for appointment as Chairman or a member of the Union Commission, or as Chairman of that or any other State Commission; and

(iii) that a member of the Union Commission is eligible for appointment as Chairman of the Union Commission or Chairman of a State Commission.

(6) In order to ensure their reasoned judgment, their independence and impartiality, the makers of the Constitution had intended that only men of mature age and long experience should be elevated to the Public Service Commissions. The age of retirement has been, accordingly,

45. Proviso to Article 320.
46. Article 320 (4). Also refer to Article 16 (4) and 335.
47. Article 320 (5).

fixed at sixty-two years for the members of the State Commissions and sixty-five for members of the Union Public Service Commission.

All these constitutional provisions have not fulfilled the expectations of the makers of the Constitution. In actual practice appointments to the Commissions, particularly in the States, have often been made on political considerations thereby lowering their prestige in the eyes of the public. In fact, due advantage has been taken of the absence of qualifications and mode of selection of the members of the Commissions by certain State Governments, with the result that appointment to the Public Service Commissions is deemed by many aspirants as reward for their party service. At the Union level, except for Shivashunmugam Pillai,who was a former Speaker of the Madras Legislative Assembly,[48] no politician has been appointed on the Commission. In the States, it is just the reverse. The Law Commission made a pointed reference to the shocking state of affairs prevailing in the States. The Commission said:"Having regard to the important part played by the Public Service Commission in the selection of the subordinate judiciary, we took care to examine as far as possible the Chairman and some of the members of the Public Service Commissions in the various States. We are constrained to state that the personnel of these Public Service Commissions in some of the States was not such as could inspire confidence from the points of view of either efficiency or impartiality. There appears to be little doubt that in some of the States appointments to these Commissions are made not on considerations of merit but on grounds of party and political affiliations. The evidence given by members of the Public Service Commissions in some of the States does create the feeling that they do not deserve to be in the responsible posts they occupy. In some of the Southern States the impartiality of the Commissions in making selections to the judicial service was seriously questioned."[49] An ex-Chairman of the Madhya Pradesh Public Service Commission said, "The constitutional independence given to the Commission is largely vitiated by vesting the appointment of Members in the hands of the Governor, i.e., the Chief Minister in actual practice. The Chief Minister often appoints persons on political, communal, regional and other grounds, and not solely on merit, such persons usually find it difficult to resist ministerial pressure and influence in carrying out their duties in an independent and impartial manner..."[50]

But what happened in Bombay (now Maharastra) will perhaps remain unprecedented in the history of Public Service Commissions in India. A Deputy Minister in the Bombay Government was appointed a member of the Commission from the quota reserved for civil servants. "Although the appointment," says B.A. V. Sharma, "seems to fulfil the legal niceties it was clearly against the spirit of the Constitution. There cannot be a worse example of a party government ruthlessly seeking to promote its interests and that of a party member in total disregard of constitutional propriety."[51]

Commission an Advisory Body

Although the Constitution provides that the Union and State Public Service Commissions shall conduct examinations for appointments to the Civil Services of the Union and that of the States and normally they shall be consulted in all matters relating to methods of recruitment, yet the status of the Public Service Commissions is advisory. The use of the words "shall be consulted" in Article 320 (3) is significant of the meaning. The Public Service Commission merely gives its opinion with regard to the suitability of a candidate for the post under consideration to the President or, as the case may be, the Governor, and it is not obligatory on the latter to accept that opinion or recommendations. Sometimes the Government directs the Public Service Commission to recommend more names than the available posts and makes selection of its own out of the panel of names so recommended without adhering to the priority recommended by the Commission. The Constitution,however, provides that it is the duty of the Union Commission and the State Commission to present annually to the President or, as the case may be, the Governor, a report as to the work

48. He was a member of the Union Public Service Commission from 1955 to 1961.
49. Law Commission of India, *Fourth Report, Report of Judicial Administration,* Vol. I, Ministry of Law, Government of India, New Delhi, 1958, p. 171.
50. Rege, D.V., "The Public Service Commission. Its Powers and Functions—A Critical Assessment" in *Studies in State Administration,* Edited by G.S. Halappa, p. 134.
51. Sharma, B.A.V., "Public Service Commissions in India", *Studies in Indian Democracy,* Edited by Aiyer, S.P., and Srinivasan, R, p. 227.

done by the Commission. Immediately after the receipt of such a report the President or the Governor is required to lay it before each House of Parliament or the State Legislature together with a memorandum of the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.[52]

It would, thus, appear that the framers of the Constitution have made a specific provision that the Legislatures of the Union and the States are the ultimate judges of Governments' actions. This provision simultaneously ensures that consultation with the Commission is not overlooked,that the advice of the Commission is as a rule accepted, and that the Governments are free in cases where they consider the matter of sufficient importance to follow their own judgment provided they are prepared to justify their action before the Legislature.[53] The Union Government have had to consult the Union Commission every year on more than seventy-five thousand cases and the number of cases in which the Commission's advice was not accepted was just 57 times between 1950 to 1985. But it increased to 92 times between 1985 to 1990 (the figures beyond 1990 are not available). The annual average, thus, shot up to 18.4 cases as against 1.6 cases in the first 35 years. The UPSC noted that what was "particularly disturbing" was that in several cases the Government did not give the reasons for the rejection of the Comission's advice. Citing the instance of 10 cases of non-acceptance in 1990, it was revealed that the Government failed to provide reasons for rejection in three cases. Out of these three, two cases pertained to appointment by promotion and one to transfer on deputation.

The States present a yet more gloomy picture. The State Public Service Commissions provide sufficient material to support that inadequate respect is shown by the State Governments to the recommendations of the Commissions. Even more grave are certain unpublished allegations of interference,direct and indirect,by authority and pressures to influence decisions. The most painful is the widespread public belief that money factor is one of the major criteria in selecting candidates. The removal of the Chairman of the Haryana Public Service Commission and the indictment of the Punjab and Haryana High Court hardens into reality.

52. Article 323.
53. Bapat, S.B., 'Public Service Commissions—An Indian Approach,' *The Indian Journal of Public Administration*, January-March 1956, p. 589.

CHAPTER XVII

Administrative Tribunals

Role of Administrative Tribunals

The Swaran Singh Committee on Constitutional Reforms, appointed by the Congress President early in 1976, recommended the setting up of administrative tribunals by a law of Parliament for determining disputes relating to the recruitment and conditions of service of the employees of the Union and the State Governments including the employees of any local or other authority within the territory of India or of a Corporation owned and controlled by the Government, industrial and labour disputes, and disputes relating to revenues, land reforms, ceiling on urban property, and the procurement and distribution of foodgrains and other essential commodities.

One justification of administrative tribunals is that in their absence the law courts are extremely overworked and consequently there is inordinate delay in the disposal of cases which need expeditious decisions. The Swaran Singh Committee expressly stated that the objective should be that "the matters going before these tribunals are decided fairly and expeditiously." But it may be added that the tribunals have advantages over the courts for citizens and the State alike. Tribunals are cheap, speedy, less legal formalities to be observed, easily accessible to the public and are composed of experts in the matter to be dealt with. Tribunals have, as the Law Commission put it, "certain inherent advantages like cheapness, procedural simplicity and availability of special knowledge." If procedural safeguards are ensured the administrative tribunals have the qualities mentioned in the Franks Committee Report.[1]

The Report of the Franks Committee is a document of great importance. The conclusion of the Committee is that the administrative tribunals are not part and parcel of the machinery of Government. They are independent organisation of adjudication for the impartial assessment of individual's claim. "We regard both tribunals and administrative procedures," the Committee said "as essential powers to society. But the administration should not use these methods of adjudication as convenient alternatives to the courts of law." The emphasis of the Report is that whosoever be the arbiter of the rights of the individual, he must be an independent arbiter and the scope for decision must be confined to points of law; neither to policy, nor to administrative expediency. The procedure that has been recommended by the Committee is : openness in inquiry or hearings, fairness and impartiality.

The three points on which the Franks Committee based its Report were : (1) all decisions of administrative tribunals should be subject to review by ordinary courts on points of law; (2) the decision should be entrusted to a court rather than to a tribunal in the absence of special considerations that make a tribunal more suitable and if possible to a tribunal rather than to a Minister; and (3) the determination that the citizen should not suffer in the protection of his legal rights from the substitution of a tribunal or ministerial inquiry or hearing for a court of law. The tribunals, as the Law Commission said, "will be useful as a supplementary system" to the hierarchy of courts. To the courts must, therefore, belong the final responsibility for pronouncing what the law is in regard to the subjects assigned to the tribunal.

But the Constitution (Forty-second Amendment) Act, 1976, expressly excluded the courts from exercising jurisdiction over the tribunals from clause (1) of Article 227 and inserted clause (5) providing that nothing in Clause (1) shall be construed as giving to a High Court any jurisdiction to question any judgement of any inferior court which was not othewise subject to appeal or revision. Articles 323-A and 323-B that authorised Parliament and the State Legislatures to establish administrative tribunals also expressely stated that appropriate legislature may exclude, in the law that it makes, the juridisdiction of all courts, except the juridisdiction of the

1. A Committee appointed by the British Government in 1955 under the Chairmanship of Sir Oliver Franks. The Report was submitted in August 1957.

Supreme Court under Article 136, with respect to the disputes and complaints falling within the jurisdiction of the tribunals, and provide for the establishment of a hierarchy of tribunals.

The Constitution (Forty-fourth Amendment) Act, 1978, amended Article 227, relating to power of superintendence over all courts by the High Court, by substituting for clause (1), as amended by the Forty-second Amendment, which now reads : "Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction." It also omitted clause (5) inserted by the Constitution (Forty-second Amendment) Act, 1976, but retained the provisions of Article 323-A (2) (d) and Article 323-B(3)(d) permitting exclusion of jurisdiction of all Courts except the jurisdiction of the Supreme Court under Article 136 (special leave), with respect to disputes and complaints of service of persons appointed to public services or of any local or any other authority or of any corporation owned or controlled by the Government.

But the remedy of appeal to the Supreme Court by grant of special leave is not adequate. Apart from the fact that it is expensive, inconvenient and shall greatly increase the work-load of the Suprme Court, there shall be confusion in the administration of law. The jurisdiction of superintendence vested in the High Courts ensures that the Courts or tribunals should conform to the law laid down by the courts. If the High Courts cease to exercise this jurisdiction as the Supreme Court remarked in a case where an administrative tribunal declined to follow a High Court ruling, "there would be confusion in the administration of law and respect of law would ir- retrievably suffer." Some of the disputes before the tribunals involve complex questions which can best be resolved by the courts. The jurisdiction of superintendence vested in the High Courts "is to be excersied," as the Supreme Court put it, "most sparingly in appropriate cases" to keep courts and tribunals "within the bounds of their authority and not for correcting mere errors."

Tribunals Relating to Service Matters

Administrative tribunals in respect of service matters have been treated separately under Article 323-A, and it is only the law of Parliament which establishes such tribunals, one for the Union and a separate one for each State or for two or more States. These administrative tribunals shall adjudicate on matters of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned and controlled by the Government.

The law of Parliament establishing such administrative tribunals should clearly specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of such tribunals, provide for the procedure (including provisions as to the limitation and rules of evidence) to be followed, exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes and complaints in respect of service matters, and provide for the transfer to each such administrative tribunal of any case pending before any court or authority immediately before the establishment of such tribunals.

Article 371- D empowers the President to make by Order with respect to the State of Andhra Pradesh special provisions for equitable opportnunities and facilities for the people belonging to the different parts of the State in the matter of public employment and in the matter of education. The law of Parliament setting up administrative tribunals and defining their jurisdiction should expressly state the repeal or amendment of any such Presidential Order.In order to ensure the effective functioning, speedy disposal of cases and enforcement of the orders of the tribunals, the law should also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

Tribunals for other Matters

Article 323-B empowers appropriate Legislature, Parliament or State Legislature, competent to make laws with respect to such matters, to provide for the adjudication or trial by tribunals of any disputes, complaints or offences with respect to all or any of the following matters :

(a) levy, assessment, collection and enforcement of any tax;
(b) foreign exchange, import and export across customs frontiers;
(c) industrial and labour disputes;
(d) land reforms by way of acquisition by the State of any estate as defined in Article 31-A in Chapter III dealing with Fundamental Rights, or any of the rights

or the extinguishment or modification of any such rights or by way of ceilings on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or either House if it is unicameral.

(g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods and control of prices of such goods;

(h) offences against laws with respect to any of the aforesaid matters [(a) to (g)] and fees in respect of any those matters; and

(i) any matter incidental to any of the aforesaid matters specified in (a) to (h).

A law made by the competent Legislature with respect to the matters enumerated above should provide for the establishment of a hierarchy of tribunals, define the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each tribunal, specify the procedure (including provisions as to the limitations and rules of evidence) to be followed, and exclude the jurisdiction of the Supreme Court under Article 136, with respect to all or any of the matters falling within the jurisdiction of such tribunals. Provision must also be made for the transfer to the relevant tribunal of any cases pending before any court or any other authority immediately before the establishmet of these tribunals. With a view to ensuring effective functioning of the tribunals, speedy disposal of cases and enforcement of the orders of the tribunals, the law should contain such supplemental, incidental and consequential provisions as the appropriate legislature may deem necessary.

CHAPTER XVIII

Elections and Parties

India's "Act of Faith"

The decision of the Constituent Assembly to give every adult Indian, male or female, the right to vote under a system of universal and direct suffrage, was, as Alladi Krishnaswami Ayyar described it, an act of "abundant faith in the common man and the ultimate success of democratic rule."[1] It was the culmination of the Congress demand which had become a *sine qua non* of independence. Under the Government of India Act. 1935, the electorate was honeycombed with fifteen different kinds of voters with reserved seats.[2] Separate communal electorates had plagued the Indian politics since their introduction in 1909. The framers of the Indian Constitution would have none of them. Article 325 states that no person shall be eligible for inclusion....in any special electoral roll....on grounds only of religion, race, caste, sex or any of them." Articles 330 and 332, however, provide for reservation of seats for Scheduled Castes and Scheduled Tribes for the House of the People (Lok Sabha) and every State Assembly[3] (Vidhan Sabha). Provision has also been made for the nomination of not more than two members to the House of the People (Lok Sabha), and one member to the State Legislative Assembly (Vidhan Sabha) if the Anglo-Indian community is not adequately represented therein.

Part IV (Articles 324-329) of the Constitution of India deals with Elections. Every citizen of India who is not less than eighteen years of age except those who are mentally unsound or who had been found guilty of criminal or corrupt practices, have the right to vote for elections to the House of the People and to the Legislative Assembly of every State. The Constitution creates an Election Commission charged with the superintendence, direction and control of all elections to Parliament, to the State Legislatures and, to the offices of the President and the Vice-President of India. The Election Commission consists of the Chief Election Commissioner and such other Election Commissioners as the President may determine their number from time to time. The Chief Commissioner acts as the Chairman of the Commission in case there are other Election Commissioners as well. Before each General Election the President may, after consultation with the Chief Election Commissioner, appoint Regional Commissioners to assist the Election Commission in the performance of its functions. The Chief Election Commissioner is liable to removal from office in like manner and on the like grounds as a Judge of the Supreme Court. The conditions of his service cannot be varied to his disadvantage after his appointment. But Election Commissioners and Regional Commissioners, if any, can be removed only on the recommendation of the Chief Election Commissioner.

In 1951-52 when Independent India held her first General Elections for 489 seats to the House of the People (Lok Sabha) and for approximately 3,300 seats to the State Assemblies with over 176,000,000 voters, their organisation presented a mammoth task. The Election Commission had to tide over many difficult situations and solve the riddles of many complex problems. The registration of voters created special problems arising from the linguistic complications, the difficulty of diverse traditions about surnames, the religious inhibitions of the Hindu women to communicate the names of their husbands and the ambiguous status of hundreds of thousands of refugees who had migrated from Pakistan. Above all was the problem of illiteracy. No fewer than 80 percent of the voters were illiterate and to obviate some of the problems thus created, the use of symbols and the multiple ballot box scheme were employed. At least 80 parties contested the elections and if individually oriented groups be

1. *Constituent Assembly Debates,* Vol. XI, p. 825. The Election Commission later characterised it, "an act of faith–faith in the common man of India and in his practical commonsense." *Report of the First General Election in India,* 1951-52, Vol. I, p. 10.
2. Article 331.
3. Article 333.

included the figure would be 190. Nearly 17,500 candidates contested the elections. More than one-third of these ran as independents; only 240 were women. Fourteen of the larger parties were recognised as the national parties and each one of them was assigned a symbol for its exclusive use throughout the country. Each of the other parties was assigned a symbol either by the National Election Commission or by a State Election Commission. Each polling booth had to contain as many ballot boxes as there were candidates contesting election from that constituency. Almost in all parts of the country, particularly in rural areas, separate facilities had to be provided for women voters.

The Election Commission set up 200.000 polling booths and stations to cater to 176,000,000 eligible voters and manned some two and a half million ballot boxes. Some one million Government officials were drafted to supervise the actual voting. But the sheer size of election operation was not the only hurdle to be crossed. In the remoter areas physical communications presented the most exacting difficulties. In some of these areas elephants had to be commandeered for transport and "at least one election official had to cope with the experience of guarding polling booths against a marauding tiger."

It was the world's largest exercise in democracy and for the Western observers it was a unique occasion. They wondered how in an under-developed country, whose people were mostly illiterate, tradition-bound, unaccustomed to the idea as well as practice of direct adult franchise and unfamiliar with the ways and tenets of democracy, this gigantic experiment would succeed. Many of them predicted that the whole thing would degenerate into a shamble. But it succeeded admirably and the Indian electorate redeemed the "act of faith" the Founding-fathers had reposed in them. The polling continued for four months, from October 25,1951 to February 21,1952 and despite the difficulties of geography and climate the voters braved the weather and distance. They came to the polling stations, attired in gala dresses, men and women, on foot, on bullock carts, camels and elephants, on bicycles, by public conveyance, and by almost every conceivable means of transportation. Most of them took their responsibilities seriously. The turnout of the voters was impressive, except in a few parts of the country, as in most of Rajasthan. Of the 176,000,000 eligible voters, 88,600,000 or slightly more than 50 per cent actually voted and nearly 106,000,000 valid votes were cast. Bearing in mind that the rate of illiteracy was nearly about 80 per cent the turnout must be regarded as a remarkably high proportion, particularly when we remember that just one-fifth of the eligible number of voters had any previous experience of voting. As many as 1,635,000 votes were invalidated. Inevitably there was some misunderstanding and confusion. The voters had to cast votes simultaneously for the State Assembly and the House of the People. In a double-member constituency two votes had to be cast in each instance instead of one. Many voters, for lack of experience and literacy, left their ballots on top of the ballot boxes, or on the floor of the booth instead of dropping them in ballot boxes.

Elections

The technique of election campaigns and the tools employed in the First General Election remained the same in the subsequent elections too. They have some familiar features with other countries of the West and some are native to the soil. The usual common techniques are public meetings, speeches by the top-ranking party leaders on hurricane tours throughout the length and breadth of the country, canvassing by the candidates together with the influential men of the area from house-to-house, exchange of salutations, handshaking, and hugging, with a pat to the children to create an emotional impact, partisan appeals and profuse promises. Temples, mosques and gurdwaras are the usual platforms for communal parties where even religious passions are aroused. The unity of the community constitutes the focal point of appeal. Certain techniques extensively used in the Western countries were not available until the June 1977 Assembly elections in the nine Northern States and Tamil Nadu. The All-India Radio was not a significant factor in the previous election campaigns. The Radio was used by the Government agency to explain the voting procedures and urging the voters to exercise their cherished right of franchise. Excerpts from the election manifestoes of the parties were read from time to time; the ruling party always commanding the advantage. Television did not exist till recently and it does not cover the whole country even now. The Janata Government initiated for the first time in May 1977, broadcasts on the Radio and Doordarshan (television) by the leaders of the national parties, but only once or twice and for a limited duration.

The tools used in election campaigns are varied and often fascinating but jarring too. Some of the parties and candidates are really ingenious in devising novel election tools in reaching the remote areas. Real ingenuity is reflected in many of the placards and posters littering every available space on the walls of the houses and commercial premises. Slogans are painted on the roads too.

In towns, cities and villages loud speakers mounted on motor cars, jeeps, tongas (hackney carriages) and bicycles blare the names of candidates and their election symbols in almost unceasing babel of sounds right from early in the morning till late at night, much to the agony of the student community and discomfiture of the public. The slogan for the Congress candidates was vote for the Congress and strengthen the hands of Nehru or Indira Gandhi. The slogan of the Janata Party in 1977 was Jayprakash Narayan's message: "Democracy V. Dictatorship."

Taking out processious is another familiar tool of election campaigning. Truck loads of shouting young people, most of whom are generally in their teens and quite a few of them are hired, cruise through the streets and along the highways. Sometimes, processions are preceded by bands or *bhangra* (dancing) parties. Torchlight processions are also taken out and street-corner meetings are held. The candidates are keen that their supporters should fly atop their houses and commercial premises the party flags to exhibit their electoral solidarity in that area, though it is not an exact barometer of actual assessment. Money power is another secret tool and the poor very often succumb to such a temptation

Since 1967 disruption of political meetings has taken the main form of violence. There were stray cases even before, but such incidents are of usual occurrences now. In 1967,there were as many as 474 reported disturbances during the sixty days preceding the poll and in 8 per cent of these cases deaths or serious injuries occurred. In West Bengal, when political murders reached a figure of 1,200 in 1970 doubts were seriously sexpressed whether an election could be held at all. Troops were, however, called to help the civil authorities in holding peaceful elections. The troops fanned in the entire State and despite extensive patrolling 120 deaths occurred during the seven weeks of intensive campaigning. In other States violence was less extreme,although Bihar saw some bloody affrays,—a product of caste rivalries,—and both Uttar Pradesh and Gujarat had serious Hindu-Muslim riots and the police had to resort to firings and the imposition of curfews. The March 1977 elections to the House of the People passed off without any serious incidence of violence, but in June 1977, Bihar, West Bengal and Uttar Pradesh again fell prey to violence and the police had to resort to firing. Later, political murders took place in Jammu and Kashmir. Home Minister Charan Singh told the House of the People that cases of violence were less in number in 1977 as compared with 1971. Comparisons are always odious and there is no denying the fact that violence is a serious blot on the electoral record of India. In Uttar Pradesh, Bihar and Madhya Pradesh electoral violence is near-endemic. In May 1981 in the nine Assembly polls 21 people died and for the first time six candidates were among the dead, three in Uttar Pradesh, two in Bihar, one in Gujarat. While most of the 21 slayings were in Uttar Pradesh and Bihar, corpses were strewn around seven (out of nine) States, including hitherto trouble-free Punjab. Capturing of polling booth has now become a routine process by organised and armed gangs of hoodlums. especially in Bihar. During the 1971 General Election, for instance, of 66 cases of booth capturing throughout the country as many as 52 took place in Bihar. In the 1977 General Election Bihar and West Bengal shared the honour of booth capturing equally. Against the 32 booths forcibly seized in Bihar, 31 were similarly taken over in West Bengal. There is ample evidence on record that even dacoits are wooed by politicians for support at the polls in the Chambal region of Madhya Pradesh and Uttar Pradesh. A top official was reported to have said in Gwalior that the dacoits "are like any other vote banks for political parties."[4] An elected member of the Uttar Pradesh Assembly sent to a notorious dacoit of Muzaffarnagar (U.P.) a letter of thanks and gratitude for his support in May 1980 election.

Until the Fourth General Election in 1967, Congress, while polling less than half of the votes cast for members of the House of the People,won 70 per cent or more of the seats. The next largest was the Communist Party of India whose strength fluctuated between sixteen and twenty-nine seats. No other Party could get enough members to be

4. The *Hindustan Times*, New Delhi, December 24, 1979.

of any real significance in 1952 and veered round this number until 1962. The Jana Sangh which began its career with three seats in 1952 increased its position to six in 1957 and fourteen in 1962.

But the Congress could not dominate the State Assemblies. In 1952 it failed to win an overall majority in the Patiala and East Punjab States Union (PEPSU),[5] Travancore Cochin,[6]Orissa and Madras. In the newly created Andhra Pradesh, the Congress could secure only forty seats against forty-one gained by the Communists. In Kerala the Communists formed the Government in 1957 by routing the Congress. In Orissa the Congress Government had to depend for its existence on the active support of the Jharkhand Party. Andhra Pradesh and Orissa soon came under the President's rule. Kerala, too, had a spell of the President's rule. In the mid-term elections the Congress gained a stable majority as a result of electoral agreements with the Socialists and the Muslim League. In Orissa the Congress, again, could not muster an absolute majority and it formed coalition Government with locally-based Ganatantra Parishad. Madhya Pradesh Congress Government fell victim to internal factionalism with the consequence that the President's rule had to be imposed. In the third General Election the share of the Congress seats in the State Assemblies fell from 68.4 per cent in 1952 to 61.3 per cent followed by the same difficulties as before, although rather less severe. The Congress Government in Kerala was shortlived and,once again,the President's rule had to be imposed. In Madhya Pradesh the Congress Government had to depend upon the support of the Independent members.

Two results emerge from this study of the election results between 1952 and 1962. In the first place,Indian politics were more''competitive'' at the State level than at the Central level, and secondly, there were certain areas where the weakness of the Congress was particularly marked. At the national level there were no real issues to be isolated, except those arising from different personalities. Broadly speaking, the people voted either for the Congress or against the Congress. The Congress had to its credit the achievements of the national movement. It won for India freedom and the memories of Gandhi were still fresh in the minds of the masses. Nehru, with his charismatic personality led the party and his name had a magic effect on the electorate. But the Congress was also vulnerable because over the years it had alienated many people and regions for one reason or another. Almost everyone who was frustrated and unhappy with his lot in life accused the party in power and that was Congress. The reorganisation of the States in 1956 created a big dent in the solidarity of the Party and its cohesiveness was severely disturbed in the regions which were deemed to have been adversely affected by the scheme of reorganisation. In the elections for the members of the State Assemblies local issues and grievances, therefore, predominated. These varied from State to State, and, indeed, from constituency to constituency. The agitation, for instance, started by the Samyukta Maharashtra Samiti and the Maha Gujarat Janata Parishad, two opposition organisations, the former for the creation of a united Maharashtra State and the latter for the separation of the Gujarati-speaking from the Marathi-speaking areas, became so violent and effective that in 1957 elections the Bombay Congress Party found its former massive majority reduced to a highly precarious one. Both these front organisations secured support from almost all sections of the people without any party compulsions. It must also be noted that though the Congress was a dominant party, both at the Centre and in the States, it was not the first choice of the majority of the people, for less than half of the voters had always cast their votes for the Congress candidates.

The leaders of the Congress Party were alarmed at these disturbing trends. The vulnerability of the Congress was revealed in the 1967 elections. In the House of the People its majority was reduced from 361 to 284; a precarious majority, for factionalism in the party had reached a stage where majority could not be safely relied upon. With the split in the Congress in 1969, the Congress lost majority in the House of the People. Sixty-five members of the House broke from it and sat with the Opposition. The minority Government of Mrs. Indira Gandhi was 52 votes short of an absolute majority and it could remain in power with the support of the Communists, the Akalis and Dravida Munnetra Kazagham.

But the situation for the Congress was far worse in the States. Bihar, Punjab, West Bengal, Orissa, Madras and Kerala were all lost. In Rajasthan it secured 89 seats out of a total of 184 and in Uttar Pradesh 199 out of a total membership of 425. In Kerala the tally was 9, in Madras

5. PEPSU disappeared after its merger with Punjab in 1956 as a result of reorganisation.
6. Travancore Cochin became Kerala after reorganisation.

50, in Orissa 31 and in West Bengal 127. The Opposition parties had become wiser by then. Hitherto the simple majority voting system had operated in favour of the Congress. The fragmentation of the Opposition enabled it to win seats on minority votes. Electoral pacts,if any,were few and perfunctory. In the 1962 elections some of the Opposition parties used the strategy of electoral agreements effectively and on a large scale and it yielded good dividends.

These electoral alliances, which had eaten into Congress majority in the States, do not fully explain the bad shape the Party had assumed. For instance, despite the electoral alliances in Gujarat and Madhya Pradesh most of the Congressmen succeeded in retaining their seats. Here the State Congress parties remained comparatively united and the alliances could not create a big dent on their solidarity. But in those States where the Congress parties were prey to intense factionalism and the Opposition alliances were powerful the damage was marked. And once the Opposition gained the day, ambitious politicians found adequate opportunities to prance into new pastaures. Formerly, to be outside the Congress was to be in political wilderness. In 1967, there were several alternative homes for the politically ambitious and frustrated adventurers. Thus started the game of defections and floor crossing. Another factor worth mentioning was the growth of factionalism in the Congress Central Election Committee, a body responsible for the final selection of candidates. This factionalised body discounted merit and partisan candidates were selected. These candidates had less vote-getting capabilities and their loyalty to the party itself was sure to be weak. Way back in 1954, Dunichand Ambalavi, wrote, "I know enough of the working of the Congress machinery and that of the Punjab Election Board of which I was a member in 1951-52. Pre-planned designs, duplicity and what not played greater role in the selection of candidates than any consideration of honesty, fair-play and recognition of the claims of deserving candidates."[7] If such things become a repeat performance at the highest level where final selections are made, the result is sure to be runious for the party, he added.

The major political effect of the 1967 elections was the proliferation of the unstable governments in North India and some other States. These coalition Governments had nothing in common to bind them together. Their instability was essentially due to the diversity of their political components or to what an Indian journalist described as "ideological promiscuity."[8] In most cases it was only the desire to power which brought them together and consequently the creation of political majorities to support them in the Legislatures proved extremely difficult. The habit of floorcrossing was another plague spot that left the Governments uncertain and, therefore, impotent. The outcome was the imposition of President's rule in one State after another. The midterm elections in February 1969 in Uttar Pradesh, West Bengal,Bihar and Punjab in no way improved the situation. This mini-general election involving some two-thirds of the electorate followed the trends of 1967. The public disenchantment with the United Front Governments in no way proved advantageous for the Congress either. A divided house was finally split among two rivals, never to combine again.[9]

In December 1970, Mrs. Indira Gandhi thought it expedient to seek a fresh mandate. She advised the President to dissolve the House of the People and order fresh elections. It is important to note that elections to the House of the People were delinked form elections to the States of Orissa,Tamil Nadu and West Bengal. Mrs. Gandhi's decision to hold fresh elections was not received enthusiastically by her own partymen. Many of the observers regarded it as a desperate gamble. She made a direct appeal to the nation to help her to carry out an effective implementation of social and economic programme through democratic processes. "Poverty" the Congress manifesto ended,"must go. Disparity must diminish. Injustice must end." To carry out the entire programme, Mrs.Gandhi explained to the electorate, a strong and stable Government committed to radical policies and backed by a decisive majority in Parliament was necessary.

The nation responded to Mrs. Gandhi's call and Congress in securing a massive majority of 352 seats in a House of 518–122 more than it held at the time of dissolution. It polled 43.64 per cent of the votes cast. For the Opposition parties,both right and left, it was a complete disaster. The strength of the Congress (O)was reduced from 66

7. *The Tribune*, Ambala Cantt. June 2, 1959.
8. As cited in Hanson, A.H., and Janet Douglas, *India's Democracy*, p. 59.
9. There was another split in January 1978, and Mrs. Gandhi was the main actor in this drama too.

to 16 seats and it polled 10.56 per cent of the votes cast. The Swatantra,which had 44 seats in 1967, could retain only 8 seats with 3.08 per cent of the total electorate. The Samyukta Socialists lost 20 of their 23 seats and Jana Sangh sank from 35 to 21 and the Communists from 29 to 24. The only major party to improve its position was the Marxist Communist Party. It secured 25 seats. Regional Parties, with the exception of DMK and the Telengana Praja Samiti, which demanded a separate State for Telengana,were erased from the national political scene. DMK won 18 seats.

In two of the three States in which elections were held simultaneously the Congress led by Mrs. Gandhi—(Congress) (R), Ruling Congress as it was then known—made spectacular gains. In Orissa, previously ruled by Swatantra-led coalition, it secured 51 seats and emerged as the largest party. In West Bengal it secured 105 seats as against 111 of the CPI (M), showing a gain of 50 on its performance of the undivided Congress. Congress (R) formed Government in coalition with the Communist Party of India, the Bangla Congress and the Forward Bloc,both regionally based parties. The DMK was given a free run for the Assembly seats on the undertaking that it would not contest the Congress (R) candidates in the ten House of the People seats.

The Congress (R) swept the polls in other States too when elections were held subsequently. Parliamentary elections to the Sixth House of the People were normally due to be held in March 1976. But internal Emergency was declared on the mid-night of June 25, 1975 and subsequently the term of Parliament and the State Assemblies was extended for a period of one year. In January 1977 the Prime Minister advised the President to dissolve the House of the People and order fresh elections. The elections were held in March 1977. Immediately after the Presidential Order dissolving the House of the People, Emergency was relaxed and all the political leaders detained were released. Four Opposition parties—the Congress (Organisation), Jana Sangh, Bharatiya Lok Dal, and Socialist Party—combined together in a single party to contest elections on a common symbol. Jayaprakash Narayana, God-father of the Janata Party, gave a call to the people not to miss the opportunity election had offered to choose between freedom and slavery—for the country, for themselves and for their children. He declared that Janata Party was committed to restoration of Fundamental Rights and the Rule of law.[10] Jagjivan Ram, the Agriculture Minister, resigned from the Union Cabinet and the Congress on February 2, 1977 and formed a new party, the Congress for Democracy. Jagjivan Ram declared at a Press conference that his party would have electoral adjustments with the Janata Party. The Janata and the Congress for Democracy had a common symbol on the ballot papers.

Of the 188,438,910 valid votes, the votes polled by the national parties were:

Janata-CFD	81,355,333	(43.17 per cent)
Congress	65,088,520	(34.54 per cent)
CPI	5,310,775	(2.82 per cent)
CPI (M)	8,103,723	(4.30 per cent)
Others	17,247,100	(9.15 per cent)
Independents	1,333,452	(6.02 per cent)

The Janata-CFD tally did not include the Votes polled by the combination in Tamil Nadu,where it contested on the symbol of the Congress(O).

The combine polled more than 50 per cent of the votes in the seven States and two Union Territories. They were: Bihar 65.01, Haryana 70.35, Himanchal Pradesh 58.37, Madhya Pradesh 57.95, Orissa 51.77, Rajasthan 65.21, Uttar Pradesh 68.03, Chandigarh 66.13 and Delhi 68.15.

The Congress polled majority votes in three States and three Union Territories. They were : Andhra Pradesh 57.36, Karanataka 56.74, Assam 50.56, Lakshadweep 58.59, Andaman and Nicobar Islands 58.54 and Arunachal Pradesh 56.34. The Party did not win a single seat in Himachal Pradesh, Haryana, Punjab, Uttar Pradesh, Delhi and Bihar. In Rajasthan and Madhya Pradesh the Congress won one seat each. In other words, out of 237 seats in seven States and two Union Territories in Northern and Central India, the Congress won just two seats. The Janata Party's performance was equally bad in the South. In Andhra Pradesh, Karnataka,Tamil Nadu, Kerala, Pondicherry, Lakshadweep, and the Andaman and Nicobar Islands, only six seats went to the Janata Party and there was only one recognisable national personality, Neelam Sanjiva Reddy,subsequently to become President of India, figuring in the ruling Party as a representative of the South.

The CPI, which secured seven seats against 23 in 1971, polled only 2.82 per cent of the votes compared with 4.73 per cent last time. It, however, obtained more than 4 per cent of the votes

10. *The Indian Express*, New Delhi, January 30, 1970.

in five States—Manipur 11.50, Kerala 10.38,West Bengal 6.49, Bihar 5.63 and Tamil Nadu 4.60—to be recognised as a national party. The CPI(M) received 4.30 per cent of the votes this time against 5.12 per cent in 1971. This party fought the Parliamentary election in alliance with the Janata Party and won 22 seats as compared with 25 in 1971.

The regional parties and Independents generated 15.17 per cent of the votes and annexed 60 seats against 22.13 per cent and 65 seats in 1971. Among the regional parties which gave an impressive performance were: the National Conference (2) which contested in Jammu and Kashmir in alliance with the Congress, the Kerala Congress (2) and other parties (Muslim League 2 and RSP I), all CPI-led ruling front Kerala,the Peasants and Workers Party (5), an ally of the Janata Party in Maharashtra, Akali Dal (9) an ally of the Janata Party in Punjab, the United Democratic Front (1) in Nagaland, All-India Anna Dravida Munnetra Kazagham (18) in Tamil Nadu and Pondicherry (1), and Maharashtrawadi Gomantak Party(1) in Goa, Daman and Diu. The percentage of votes polled by these parties together with other smaller parties in the respective States were : Jammu and Kashmir 34.99, Kerala 24.31, Maharashtra 10.24, Punjab 40.57, Nagaland 51.68,Tamil Nadu [including DMK, AIADMK, and Congress (O)] 48.05,Goa 40.52 and Pondicherry 53.32.

In mid-April 1977, The Union Home Minister "appealed" to the Chief Ministers of the nine States—Punjab, Himachal Pradesh, Haryana, Rajasthan, Uttar Pradesh, Bihar, Madhya Pradesh and Orissa where the Congress suffered a rout in the March elections to the House of the People—to advise the Governors to dissolve their Assemblies and immediately seek a fresh mandate from the people. The "appeal" was not accepted and the President issued proclamations declaring breakdown of the Constitution in these States and dissolved the State Assemblies. Tamil Nadu was already under the President's rule since January 1976. The elections to the State Assemblies of these States were held in early June. Elections to the Jammu and Kashmir State Assembly,which had been dissolved earlier by the Governor on the advice of the Chief Minister were held in the end of June.

The Janata Party again swept the polls in the States of Himachal, Haryana, Rajasthan, Uttar Pradesh, Bihar, Madhya Pradesh and Orissa. The public support for the Party,though somewhat dissipated, was still solid enough and in no State did it receive less votes than Congress in its heyday. In the Punjab there was Akali-Janata and CPI(M) alliance. In West Bengal CPI(M) went alone and for the first time came into power in its own right, without being dependent on the support of partners in a coaliation. In Tamil Nadu All-India Anna Dravida Munnetra Kazhgam won as many as 129 seats in 234 member House. The DMK secured 49 seats. In Jammu and Kashmir for the first time since independence, the voters had an option between two national parties (Congress and Janata) and one local party (National Conference) and they exercised their vote in favour of the National Conference with a predominant majority.

In July 1979 the Janata Party disintegrated and apprehending certain defeat on a vote of no-confidence moved by the Leader of the Opposition,Y.B.Chavan, in the House of the People, against the Janata Government, Prime Minister Morarji Desai submitted to the President his own resignation as well as that of his Council of Ministers. After prolonged consultations and discussions, the President appointed Charan Singh, heading the Lok Dal-Congress (U) coalition with outside support of the Congress (I). The President, while appointing Charan Singh as Prime Minister, had fettered him with the condition that he would seek confidence of the House of the People within a month's time. But Congress (I) subsequently withdrew its support from the Government and the Lok Dal-Congress (U) coalition could not command sufficient support in the House to steer through the condition of seeking a vote of confidence and, consequently,resigned. Prime Minister Charan Singh advised the President, on the basis of the decision of his Cabinet, to dissolve the House of the People and command fresh elections. The President thereupon dissolved the House of the People and the Lok Dal-Congress (U) coalition remained in office as a care-taker Government till fresh elections were held in January 1980. Congress (I) headed by Mrs. Indira Gandhi received massive mandate from the electorate virtually routing all other parties contesting the mid-term Parliamentary election.

Following the precedent set by the Janata Government in February 1977, the Congress (I) Government also dissolved the State Assemblies where non-Congress (I) Governments were in power. Switching over loyalties, a proverbial feature of Indian politics, had started much ear-

lier, even before the Parliamentary elections in January 1980. Bhajan Lal, the Haryana Chief Minister, took the lead and along with 37 members of the State Janata Legislative Party, joined Mrs. Gandhi's Congress and others joined them afterwards. In Himachal defections from the Janata ruling party reduced Shanta Kumar's Government into minority and the Congress (I) leader, Ram Lal, took over the Government. In the States of Punjab, Uttar Pradesh, Madhya Pradesh, Bihar, Orissa, Rajasthan and Maharashtra Congress (I) secured respectable majorities and formed Governments in those States. The position as it existed in May1981 was that Congress (I) Governments ruled in the sixteen States and in the remaining six, CPI(M) was in power in Kerala, Tripura and West Bengal, All-India Anna Dravida Munnetra Kazhagam in Tamil Nadu, the National Conference in Jammu and Kashmir and Sikkim Congress in Sikkim. The same old pattern of uni-party Goverment both at the Centre and in the States, was once again, repeated. Both in the January 1983 Assembly elections Congress (I) lost its ruling position both in Andhra Pradesh and Karnataka. Tripura went to the CPI (M) for the Second time.

Parties: (1) Congress

The Indian National Congress was the ruling party at the Centre from 1947 to March 1977 when the Janata Party stepped in its place. It reigned supreme in all the States, except for a short spell in Kerala, till the 1967 General Election when its fortune began fluctuating. Till 1980 it was totally eclipsed in the Northern States. Although it was the ruling party in the States of Maharashtra, Andhra Pradesh, Karnataka and Assam, but was in disarray as a result of defections and internal dissensions eventually resulting into the Party's second split in January 1978. In Kerala it was in coalition Government with the Communist Party and the Muslim League.

In conversation with Michael Brecher, Krishna Menon described the one great advantage that Congress had over its competitors. "The great strength of the Congress Party," he said, "is that they have a place in the hearts of the people. There is nothing to take its place. I mean you cannot compare it to a Western political party; it is not strictly a party, it has got a mystique; it is a movement still." But after Independence the Congress had to play a very different role. It had become the successor to the British authority in India. There was at that time much heart-searching and stock-taking in the Congress ranks as to whether the Congress should continue to function when its mission of winning freedom for India had been fulfilled. Gandhi himself felt that the Congress should dissolve and turn itself in a Lok Sewak Sangh (Society for the service of the people),because he did not want the child of his toils and symbol of national unity to become the plaything of politics and be reduced to the position of a mere party manoeuvring for power. The majority in the Congress, however, as Prof. Avasthi says, "declined to commit political 'harakari' and decided to stand forth as a political party in the usual sense of the terms." The Congress thus, ceased to be an omnibus organisation which could contain almost any Indian who wanted his country to be free. It became instead a political party, which was at the same time the Government of Independent India. It meant that Congress could not command the support and respect of all those comrades who had fought together the battle of freedom. Gandhi's assassination so soon after Independence also removed from the scene the most unifying influence of all and, then followed the process of disintegration in the Party. The Socialists, who formed the left-wing of the Congress, separated and established a new party under the leadership of Jayaprakash Narayan. Sarat Chandra Bose formed another party, the Socialist Republican. A few more members of the Congress Party in the Central Legislature formed the Socialist Democratic Party under the leadership of Prof. K.T.Shah. Some were expelled, or were forced out by the change in Congress Policy.

But the Congress retained some of its former mystique and influence. It was Gandhi's party which had led India to freedom and the Government was headed by Nehru whose role in the freedom movement was revered by all. He was the beau ideal of the old and young alike and the Congress still tried to be all things to all men. "I have begun with Congress", said an old man in a rural constituency, "have stayed with Congress and will end with Congress, because Congress is the first party. The flowers that bloom in the field, the crops that grow in the field, they are there because of Congress." Such sentiments generally expressed the feeling of millions of Indians in whose hearts respect for Congress remained unshaken.

The younger generation did not have any such memories to recall. Their parents might have recited to them the anecdotes of the national

movement. The Congress leadership, too, continued to remind them of the glorious achievements the Party had to its credit. But past is past with distant and fading memories. The Congress old guard had practically disappeared and even among the middle-aged Congress leaders very few had "graduated from British jails." Here lies part of the explanation of both Congress's former dominance and its decadence.

A second and equally important explanation is to be found in political organisation of the Congress. It is the only political group in the nation with a truly all-India organisation. Its lowest organisational unit is the committee in a village or town or city ward. The line of organisation extends from the local committee to other committees in larger sub-divisions of the State,to Pradesh(State) Committees,and from the Pradesh Committee to the Central party apparatus, headed by the all-India Congress Committee and the Working Committee. Theoretically, the annual session of the Congress is the supreme policy-making body, but in practice it is of the nature of party rally which brings together the leaders of the party and thousands of delegates. The delegates and others who attend the annual session listen to the reports from party committees, and they endorse, usually without much debate, large number of resolutions, formulated or at least approved by the party's High Command.

There are three successive stages whereby the Congress built itself into a genuine national party. Originating amongst a "microscopic minority," to use Lord Dufferin's language, of Westernised professional men, at the beginning of the present century, the Congress began to recruit support from the indigenous business community. When Gandhi entered upon the political scene, it stretched towards the masses. Although it rarely reached the lower strata of society, the Congress became popular among the middle strata such as peasant proprietors, tradesmen and skilled artisans. With Independence and Congress having succeeded to authority, its appeal extended to even more socio-economic groups and the response was astounding as the people regarded it the only political vehicle for the realisation of their aspirations. Those who chose to remain outside the party itself would at least cast their votes for the Congress, though they might have disagreed with many specific items of Congress policy, as they respected it as an effective organisation capable of delivering whatever "goods" there were to deliver. The organisational effectiveness, therefore, goes a long way to explain the former Congress dominance.

The recruitment of members from a wide spectrum of caste and interest groups was undoubtedly a source of strength for the Congress, as it increased immensely its vote catching capacity and Nehru could raise the slogan in 1953 that "the Congress is the country and the country is Congress." But it gradually became transformed into a source of weakness. This process of aggregation and accommodation was much more difficult for local leadership. The locals were faced with the choice of preserving their own leadership by discouraging recruitment, or winning additional votes by bringing into organisation new elements which might subsequently displace them. True, that with Independence rapid avenues became available for local leaders to realise their political aspirations, but it also tended to reinforce factionalism which is characteristic of all Indian organisations and associations. The factions are like miniature parties within the broad party. Their numbers and strength varied from area to area but on the whole one may agree with Paul Brass, who studied the Uttar Pradesh area, that "organisationally, Congress is a collection of district factions and state factions forming alliances and developing hostilities in a constant struggle for positions of power and status in Congress-controlled institutions."

In the beginning actual factions were not entirely "chaotic or anemic" in their mode of operation. They were tolerated by the central leadership on the ground that factionalism within the party served some useful purpose. It was considered a democratic process as factions were the agents of political recruitment which widened the base for grassroot political participation and kept the party responsive to the constantly changing political environments. But there was another side of it too. Factionalism made the process of decision-making difficult and lengthy. It made the central leadership paralysed as the leadership increasingly preoccupied itself with the maintenance of internal unity of the party to the exclusion of any other objective. Moreover, as Baldev Raj Nayar Remarked, "the spectacle of constant bickering amongst Congressmen, the public display of inner party controversies and the open defiance of party discipline make not only for the denigration of the Congress Party, but also lead to a contempt for the political system and party

itself."

The organisation of the party in power is expected to work in close harmony with, and always be willing to be guided by and support the ministerial wing. The head of the organisation, the party President, and the Leader of the Parliamentary wing, who is the Prime Minister, should, in theory at any rate, always work hand in hand in order that the party policies and programmes are duly implemented. But Nehru and the other top leaders firmly believed that having accepted the parliamentary system and the constitutional doctrine of ministerial responsibility of Parliament and through it to the people, the role of the organisational wing was only to take broad decisions on party programme and organising its members for electoral and "constructive" work. The practical difficulties of such a separation of powers are obvious and there were quite a few influential members in the party who bitterly complained that intra-party democracy was being thrown overboard.

At the Centre, "the Prime Minister and the Congress President tended to regard each other at best with suspicion and at worst with outright hostility."[11] J.B. Kripalani, who succeeded Nehru as President of the Party, when the latter became Prime Minister, tried to insist that political decisions should be made in consultation with the Working Committee. Kripalani had already taken measures to insulate the Working Committee from the governmental influence by limiting the number of ministers among its members to one-third of the total membership. Both Nehru and Patel "fought him vigorously" with the result, that, within two months of Independence, Kripalani tired of the struggle, resigned from the Congress presidency and, soon after, from the party to become its veteran foe. He formed a new Party,the Kisan Mazdoor Praja Party (KMPP). Purshottam Das Tandon, who became the President in 1950, also challenged Nehru and he, too, was forced to resign. Thereafter Nehru himself became the President and combined the two posts, Prime Ministership and the presidency of the party, for some years. According to Frank Moraes, this victory for the parliamentary wing created "a Congress habit of mind...which led the overwhelming bulk of the party to look to the Prime Minister and not to the President of the Congress for the political guidance."

Nehru's successor to the presidency, U.N. Dhebar, was hand-picked and he was not at all prominent in the higher circles of the party or of the Government. In 1969, Dhebar was succeeded by Mrs. Indira Gandhi. Mrs. Gandhi's successor was D. Sanjivayya, a comparatively young Chief Minister of Andhra Pradesh. Thus,whether he held the position of Congress President or not, Nehru had been the unquestioned leader of the party as well as the nation, till his death in 1964.

Nadar K. Kamraj was the President when Nehru died and he managed the succession of Lal Bahadur Shastri to Prime Ministership. Kamraj and his 'Syndicate'—a small group of the Working Committee—contrived to establish the principle of collective responsibility and it was claimed by influential Congressmen that there existed one. Shastri lived for a short time and apparently there was no conflict between him and the Congress President. Kamraj, again, succeeded in installing Mrs. Indira Gandhi as the Prime Minister. Kamraj did not favour the selection of Morarji Desai, another candidate, as strong-willed and obstinate he was, he might not get on smoothly with the party. Indira Gandhi, on the other hand, would depend upon the Congress President for advice and guidance, being a woman and inexperienced. But she soon asserted her independence. Kamraj himself lost control over the party after his defeat in the 1967 elections and many of the other "tallest poppies," such as, Atulya Ghosh and S.K. Patil. The relations between the ministerial and organisational wings became so sour that party unity could no longer be maintained. The split over the Fourth Presidential election in 1969 left the Congress a divided camp and a party of hostiles in search of an opportunity to run down one another. The public clash between the Congress President, Nijalingappa, and Mrs. Gandhi took away the simple grace which party solidarity demanded.

The Working Committee comprising the Nijalingappa group expelled Mrs. Gandhi from the party for her "constant denigration of the organisation...acts of indiscipline" and " a basic and overriding desire to concentrate all power in her own hands," and called upon members of the Congress Parliamentary Party to elect a new leader. The other half of the Working Committee (10 out of 21) led by Mrs.Gandhi countercharged Nijalingappa and his syndicate for reducing to mockery democracy and discipline within the

11. Hanson, A.H., and Janet Dougals, *India's Democracy*, p. 70.

Congress "by small coterie equating itself with the entire organisation" and "ousted" Nijalingappa from Congress Presidentship. The Congress split, into Congress (Ruling) under Mrs. Gandhi and Congress (Organisation) under Nijalingappa, was complete.

In the States the conflict between the Chief Ministers and the Presidents of the Pradesh Congress Committees was even sharper, but its pattern varied from State to State. Y.B. Chavan, for instance, kept the Maharashtra organisational wing under his tight control whereas in West Bengal it was just the reverse. Here, Atulya Ghosh, the organisational leader, maintained dominance over the ministerial wing. In other States, "the fortunes of battle rocked to and fro with varying results". In Uttar Pradesh the battle had always been too severe and many a time ministries had fallen as a result. In many States the Legislature parties and the Pradesh Congress Committees functioned as virtually two independent parties and the supporters of the organisational wing acted in the manner of an Opposition and on occasions embarrassed the government by tabling motions critical of the Government. Whenever the Central leadership tried to intervene,it met with partial success and that, too, temporarily to flare up again. After the declaration of Emergency these rifts did not abate,but they took a new form. The Pradesh Congress Committees and the Legislature parties became beggars at the gate of not the Central leadership but the Prime Minister. They would invariably seek the good offices of Mrs. Gandhi to intervene. Many Pradesh Committees were superseded on her behest and replaced by the *ad hoc* committees manned by the personnel of her own choice. The Chief Ministers were made and unmade by her with rivalries to recur again but leaving behind a corps of disgruntled Chief Ministers removed by Mrs. Gandhi. They formed the core of the Congress for Democracy and the Janata Party and helped the disintegration of the Congress and its humiliation at the March and June 1977 elections.

The Congress after the 1967 elections stood discredited at the bar of public opinion. Factions were rampant in the Party and the average Congressman was collecting dividends on his past investment. Sidhartha Ray,former Judicial Minister of West Bengal,said in the State Assembly in 1958 that the Congress Party and administration were "helping in building up a morally corrupt and physically weak nation."[12] Dunichand Ambalavi,wrote in 1959. "If I were to narrate all that has happened inside and in the name of the Congress since the advent of freedom it would be a harrowing and distressing story. In the General Elections of 1951-52, many Congress notables in the Punjab, acted upon the adage 'make hay while the sun shines.' Some of them who could not and did not go to the Punjab Legislative Assembly made piles of money."[13] Pyarelal, a former Private Secretary to Gandhi, wrote, "It has to be admitted that India today is far from realising the picture of what Gandhiji called 'India of my dreams.' Bribery and corruption are rampant all round, and on all accounts it is at worse than it was under British rule. Favouritism and nepotism and failure of the judiciary to give unadulterated justice to the people in innumerable cases is a distressing fact."[14] C.D. Deshmukh maintained that it was now recognised that the administrative machinery at all levels was "erratic and inadequate. The Public heard of nepotism, high-handedness, gerrymandering,feathering of the nest through progeny and many other sins of commission and omission."[15]

There was a close association between factionalism and patronage which assumed different forms and toadying of the worst kind. The distribution of favours was, of course, the most important of the weapons that a dominant faction could wield. If used judiciously it could bring together the whole State organisation in a unity,but this was a precarious unity and was achieved at a perilous cost. It debased the nation and deprived it of credibility. It was experimented on a large scale and one of its most successful practitioners was Pratap Singh Kairon, the Punjab Chief Minister (1956 to 63). He managed his unruly followers and opponents by what he described as "the American technique"—everyone had his price. So was Atulya Ghosh of West Bengal. He once admitted that under his leadership the Pradesh Congress Committee had become "a place for spoils and favours"—a situation he justified on the grounds that the alternative was mobocracy, which indeed it seemed to have been. The leadership in the States corrupted the people in order to strengthen their base of authority and status

12. *The Tribune*, Ambala Cantt., March 26, 1958.
13. *The Tribune*, Ambala Cantt., June 2, 1959.
14. *The Tribune*, Ambala Cantt., October, 2, 1954.
15. V.S. Srinivasa Sastri Endowment Lecture, Madras University, July 11, 1959, *The Hindustan Times*, New Delhi, July 12, 1969.

and the vicious circle grew like a snowball. The corrupted themselves would become corrupters to strengthen their own party position. There could be no more damaging indictment of Congress rule than the observations made by the Election Commission in its report on the Fifth General Election, 1971-72. It asked, "How can we expect that the election would be corruption-free when the whole country in every sphere and department of life and activity is plunged in the sea of corruption?" The Congress rule had become synonymous with the "licence, permit and quota raj." The Tarkunde Committee on election reform, appointed by Jaya Prakash Narayan, expressed the view in its report in February 1975, that among the political parties the Congress had the greatest access to business finance "by reason of its power of patronage."

In all elections since 1971 the personality of Mrs. Gandhi became the only focal point of party propaganda. Both the party's election manifesto and its publicity literature exalted her as an incomparable leader with the power to solve all problems of the country. "She is", declared in one of the advertisements in newspapers, "the only national leader whose image is enshrined in the hearts of the people." Nehru had raised the slogan in 1953 "the Congress is the country and the country is Congress." The tradition of heroworship was carried to such extreme lengths that no less a person than the Congress President equated India with Indira. But the March 1977 elections proved otherwise. Emergency took its toll and the Prime Minister herself was defeated in a constituency that she had nursed so fondly. For the Congress, the election was the end of the road until the Party purified itself or to put it in the words of Brahmanada Reddy, it goes "back to its pre-independence modes of service and sacrifice."[16] Immediately after relinquishing her office as Prime Minister, Mrs.Gandhi went in political seclusion. There were speculations that she intended to stage a comeback. In reply to a question at a Press Conference whether Mrs. Gandhi was returning to active politics, the Congress President said, "I do not know. She seems to have said that she is not returning to active politics."[17] Asked if this was good for the party,he said that she must have taken the decision for the good of the party. All sane elements in the Congress believed that Mrs. Indira Gandhi should leave the party alone if it was to survive. But she found her survival in splitting the Congress for the second time and engineering for herself the Presidentship of the split group, Congress conventionists and finally known as Congress (Indira).

Within two months after the second split in January 1978, Mrs. Gandhi had amply demonstrated her mettle. February 1978 State Assembly elections in Karnataka, Andhra Pradesh and Vidarbha in Maharashtra established beyond doubt that she was the principal architect of Congress (I) success. In Andhra Pradesh, for instance, hit by the worst-ever cyclone in its history in November 1977, the ruling Congress was humbled and the breakaway Congress (I) firmly established its credentials as a legitimate heir to the legacy of the undivided Congress. The Janata,which had made a strenuous effort to capture power, could barely retain its status as the main Opposition Party in the new Assembly. The Congress was reduced to party of 30 members in the 294-member Assembly. The performance of Congress (I) was equally stunning in Karnataka and it became partner in the coalition government in Maharashtra on terms of equality.

In the official Congress there were two strong groups, one favouring unity with Indira's Congress and the other strongly opposing it. Mrs. Gandhi responded to the call for unity and prolonged parleys were held. But all proved futile because those who did not want to return to her fold and whom she did not want to return to her by themselves made not much difference to the country's political scene, except Y.B. Chavan and he, too, exercised some influence in Maharashtra alone. Mrs. Gandhi, accordingly, dictated her own terms for merger of the two wings. Swaran Singh, who headed the other Congress, ultimately reported to his Working Committee on March 12, 1979 that Congress(I)was uncompromising on every issue and it had refused to agree to modalities which would have meant that the two parties were coming together on terms of equality. An impression was rather sought to be created that it was the Congress that had to merge in Congress (I). The Working Committee, then, decided to break off unity talks.

The January 1980 Parliamentary elections

16. *The Times of India*, New Delhi, August 1977.
17. *Ibid.*

once again proved that Mrs,Indira Gandhi was by far the most charismatic and astute political leader that India had produced since Jawahalal Nehru. The massive majority she secured in the Hrouse of the People (Lok Sabha) was a rare personal triumph for her more especially when she and her Party had lost the people's confidence almost completely in 1977. Mrs. Gandhi showed her indomitable will in the way she overcame the trauma of her personal tragedy and politically rehabilitated herself and her Party. Her ceaseless political tours which took her to almost every part of the country all the way from Udhampur (Jammu) to Kanya Kumari, backed by a well-organised election and publicity machine, put her way ahead of her rivals. But she could not ignore the important part of this election that the votes cast in favour of the Congress were barely 43 per cent of the total votes cast. It meant that 57 per cent of the voters voted against her and her party, the Congress.

Despite the lessons of Emergency, Mrs. Gandhi's style of functioning remained the same. She combined, without regular election, Presidentship of Congress (I) with the office of the Prime Minister which she held, thus, obliterating the neat line drawn between the organisational and parliamentary wings of the party. No election was held for any of the Congress committees in any of the State and the same old style of *ad hocism* was the rule. This led to groupism and dissensions in the ranks of the Party. In the absence of recognised leadership at the State level, most State governments were riven by differences and disaffection erupting in ministerial crises from time to time and urgent problems which required immediate solution were put in cold storage. The condition was really chaotic. She warned and even reprimanded her warring partymen and legislators, but it had no effect. She really failed to display the same mettle,which marked her in the 1980 elections in disciplining her own Party. The centralisation of the Party had, no doubt, smothered inner- party democracy, but it had made the party no more cohesive. It progressively diminished the central leadership's effectiveness since it was so deeply involved in sorting out parochial quarrels that would once have been settled locally.

With the Party's bastions in the South stormed, it faced an uncertain prospect in the 1985 Parliamentary election. Since the fear of incurring Mrs. Indira Gandhi's displeasure and the awe of her charisma had become less effective the result was that as the next Parliamentary election approached, more and more members of Parliament started seriously thinking whether they would not be better off by throwing in their lot with some other party. That had been the lesson in the history of political parties in India and Andhra Pradesh and Karnataka opened the way. But Mrs. Gandhi was not oblivious of these likely developments. Closely on the heels of the Andhra Pradesh and Karnataka debacle and with an eye on the 1985 Parliamentary election, she initiated measures to revamp the Party and the Government. She made changes in the Cabinet and let the Maharashtra and Himachal Pradesh Congress (I) Legislative parties choose successors to Balasaheb Bhosle and Ram Lal as an earnest effort of her intention to let Party unit run their own show. She appointed Kamalapati Tripathi as the working President and responsible for party affairs. She appointed C.M. Stephen and Rajiv Gandhi as General Secretaries of the party and later convened a meeting of Pradesh Party Presidents and Secretaries to rejuvenate the organisation with an announcement that party elections at all levels would be complete by July,1983.

She also made changes in the Union Cabinet and sought to tone up the functioning of the bureaucracy and to come down on corruption and waste. She wanted to lick her Party into shape and deliver the government that worked that she promised in the 1980 election campaign so that by the time the 1985 Parliamentary election came round, she and her Party should be strong to meet any challenge. But the real problem of the Party was the neglect of grassroot sentiments all these years which had encouraged contention among local factions. A government cannot run affairs of a nation effectively unless it is backed by a dynamic organisational infrastructure of the ruling party.

Rajiv Gandhi succeeded Mrs. Indira Gandhi after her assassination on 31 October 1984,as Prime Minister and President of the Congress (I). In his capacity as President of the party he expressed his firm resolve to depart from the old practice and to take early steps to conduct the party poll and, thus, to put an end to what the commentators had described all these years as the "President's rule" in the Congress (I). In December 1985,at the Congress centenary session in Bombay, he vowed to eliminate the "power brokers" who stepped up their activities and the "moneybags" to help them to recruit non-exis-

tent persons as part of organised jockeying for elective positions. He also showed his keenness to entrust the affairs of the party to younger people. The generational change was sought to be accelerated and this produced a sharp reaction, even stiff resistance. It was the clash between the old guard and the younger lot that added a new dimension to the tussle of positions of vantage in the party. The reluctance of the old timers to give up the levers of power was matched by the grabbing proclivities of the freshers. The latter had the advantage of support and encouragement from the top whereas the former feared edging out with humiliation, and the end of their long political career.

This clash was in the making for the past two years (1987) if one were not to take into account the period when Rajiv Gandhi influenced party decisions in his capacity as the General Secretary of the All-India Congress Committee (I) during the life time of Mrs.Gandhi or the impact of Sanjay Gandhi's emergence on the party's functioning. When Rajiv Gandhi became the Prime Minister and the President of the Congress (I) the clash surfaced on the eve of the 1985 House of the People (Lok Sabha) poll–at the time of the selection of candidates. He wanted a total break with the past and opposed the renomination of a large number of old foggies in the House of the People (Lok Sabha). Kamlapati Tripathi,otherwise not very effective as working President of the party cautioned against wholesale changes,and was able to exert some restraining influence. The compulsions of the elections led to a give-and-take though the compromise clearly weighed in favour of Rajiv Gandhi. But the induction of younger members in the Union Council of Ministers from January 1985 onwards and the changes in the organisational set-up in the States alarmed the old timers. The subsequent signals perturbed them further. Their anger found expression in derisive references to "computer boys" or "childish" ways of running the affairs of government and the party.

The response to the challenge posed by tussles and clash was different—postponement of the party poll. At a press conference in February 1987 in response to some pithy queries Rajiv Gandhi mentioned difficulties posed by the scrutiny of the party electoral rolls to screen out bogus members. As regards "concentration of power", he said he did delegate authority to the Vice-President and the working President and if they had gone now it was not his fault. It was clear from the remarks of Rajiv Gandhi at the press conference that his ideas of reorganising the party set-up were limited to the removal of the working President Kamlapati Tripathi and the Vice-President Arjun Singh. These two extra constitutional authorities were created in totally different circumstances but got embroiled in equally sharp controversies. Kamlapati Tripathi was inducted as working President around the time when Rajiv Gandhi became General Secretary after the death of his younger brother Sanjay Gandhi in 1980. Indira Gandhi obviously had in mind a blend of experience and dynamism. In the peculiar situation after her assassination, however, Tripathi lost whatever little relevance he had till then. The veteran could not be removed but the gap was filled early in 1986 with Arjun Singh's appointment as Vice-President. They were provided with a large team of General Secretaries, including some who had been dropped from the Council of Ministers. The experiment did not work. Though Arjun Singh was to work under the guidance of, and at the directions of the working President, the two could not establish even a semblance of working relationship. Kamlapati Tripathi was gradually sidelined as Arjun Singh took important decisions either on his own or under the advice of Rajiv Gandhi or his aides. The task of removing Kamlapati Tripathi, if not Arjun Singh, from his controversial position turned out to be tough as he refused to catch hints and defied the cajoling by M.L. Fotedar, who acted as Secretary to Rajiv Gandhi in his capacity as party President. To get over the irksome situation, a new device was thought of—all the office-bearers were required to quit and later, while the General Secretaries were allowed to continue, the resignations of the working President and Vice-President were accepted.

The phenomenon of bogus members was not new, but had been evident from the time the Congress assumed power at the Centre and in the States after Independence and its membership became the vehicle of high positions. Even before 1947, when the Congress was in no position to distribute rewards and patronage,the scramble for party office used to be acute. But neither the intensity of feeling aroused by the contests nor the gigantic nature of the scrutiny task deterred those controlling the party on various occasions from conducting the elections. The norms changed from 1973 onwards when Indira Gandhi acquired total control of the party machine with her supremacy and its ready acceptance by the

party members at all levels with senior leaders taking pride in "democratic centralism" that replaced the electoral process. The Emergency period strengthened these trends, leading to the emergence of extra-constitutional authorities both in the working of the Congress (I) and the Government. Surprisingly, appropriate lessons were not learnt as the rout of the Congress in 1977 could have been averted had the party scrupulously adhered to democratic principles in its working, though it might be an over-simplification, but the denial of inner party democracy certainly did contribute to Mrs. Indira Gandhi's fall. After her return to power in 1980 no attempt was made to do away with the new culture which had struck deep roots.

That legacy Rajiv Gandhi inherited. The Congress (I) Party remained very much Rajiv Gandhi's Party, as it was her mother's during her life time. The Party continued to have nominated leadership from the apex down to the lowest level and as a important corollary to this practice, the Chief Ministers in the Congress (I) governed States were picked up by the decision-makers at the Centre if and when the occasion arose. Most of these Chief Ministers who occupied these posts were not chosen by their respective Legislative parties. A breath that made them could also unmake them.

Rajiv Gandhi combining unto himself the Prime Ministership and the post of the President of the Congress (I) became power-intoxicated. He was arrogant in his postures and entirely cut off from the masses. The 1989 election to the Lok Sabha threw the Congress (I) out of office. It secured just 197 seats of a total 510 contested with 39.5 per cent of the total number of votes cast. With- in less than a year another election to the Lok Sabha was necessitated. The Congress vote declined from 39.5 per cent in 1989 to 37.3 per cent in May-June 1991 elections. Despite this drop the Party won 225 Seats, 28 more than 1989. The reason for this increase in the number of seats was a more divided opposition vote than in 1989. As a result of February 19, 1992 elections to the Lok Sabha in the Punjab State and by-elections in other States the strength of the Congress has gone up to 243 seats.

After Rajiv Gandhi's assassination on May 21, 1991, P.V. Narasimha Rao occupied for the interim period, the office of the Congress (I) President as also that of the Prime Minister of India by virtue of being a leader of the largest single Party in the House of the People, though he himself was not a member of either House of Parliament. It was for the first time in the history of Independent India that a non-member of Parliament was summoned by the President to form the government.

Narasinha Rao firmly committed himself and the Congress (I) Party to restore internal democracy in the Party and as a consequence to hold elections at all levels of the Party organisation and saddle the duly elected members in office. He also promised to rigidly adhere to the democratic norm of 'one man one post '. The process of elections is more or less complete now. Narasinha Rao has been unanimously elected President of the All India Congress Committee and together with the office of the Prime Minister the norm of 'one man one post' has not been adhered to.

(2) Janata Party

Janata Party was the successor to Congress as a ruling party at the Centre. In the June 1977 elections it succeeded in ousting the Congress Governments in the States of Himanchal Pradesh, Haryana, Rajasthan,Uttar Pradesh, Madhya Pradesh, Bihar and Orissa. In Punjab the Akali Party was in alliance with Janata and CPI(M). In Jammu and Kashmir, West Bengal, Tamil Nadu and Kerala the Janata fared miserably. No elections were held in Assam, Maharashtra, Andhra Pradesh and Karnataka and Congress Governments remained there in office, although consistent with India's political culture there had been spate of defections and floor crossings,especially when the Janata Party kept its "doors open" to members of the Council of States (Rajya Sabha) and the States Assemblies."[18]

The formation of the Janata Party was the result of tentative steps taken inside Tihar Jail, Delhi, as described by Atma Singh, former Punjab, Development Minister. He said that twenty prominent leaders of the Bharatiya Lok Dal, Congress (Organisation), Jana Sangh and the Socialist Party—all detained under the Maintenance of Internal Security Act—met on February 6,1976 in a closed door meeting under the chairmanship of Charan Singh,the Bharatiya Lok Dal leader. They were allowed to go out of the room only after they had endorsed the decision, initiated by

18. Announcement made by Janata Party General Secretary Surendra Mohan on April 26, 1977, *The Hindustan Times*, New Delhi.

Prakash Singh Badal (Akali Dal), to constitute a United Party to fight the Congress. After a month Charan Singh was released on parole and he was authorised to meet Jayaprakash Narayan to announce the formation of the Janata Party.[19] The Emergency was relaxed in January 1977, and all Opposition leaders were released from detention to enable the political parties to contest elections to the Sixth House of the People scheduled to be held in March.

On January 20, 1977, Morarji Desai announced that the four Opposition parties—Bharatiya Lok Dal, Jana Sangh, Congress (O) and Socialist Party—had combined into an alliance to contest the elections as a single Janata Party. The newly created combination received the blessings of Jayaprakash Narayan who announced its main aims at a Press conference. He said that the main aim of the Janata Party would be to decentralise power, so that people even in the remotest villages could participate in the making of decisions and plans that concern them. And of course the party will revive the strength of independent institutions like the judiciary and the Press that act as a check against authoritarian rule." The Janata Party, he added, "is committed to follow Gandhian principles in evolving its socio-economic programme for in spite of much talk about 20 and more points, the conditions of the poor have deteriorated."

In accordance with the aims outlined by Jayaprakash Narayan the main thrust of the Janata Party's manifesto, released on February 10, 1977, was the use of Gandhian principles and policies to restructure the economy. By doing so, it hoped to focus attention on agriculture and unemployment and "ensure decentralisation of economic and political power." If returned to power, the Janata Party promised to lift the Emergency, restore Fundamental Rights, repeal Maintenance of Internal Security Act, seek to rescind the Constitution (Forty-second Amendment) Act, 1976,and other such measures that "will free the people from the bondage of fear and restore to the citizen his fundamental freedoms, and to the Judiciary its rightful role." The Party would work for devolution and decentralisation of power and seek a national consensus in favour of smaller districts and smaller development blocks "so as to encourage democratic participation and sound economic management and micro-planning."

The manifesto in its section on a "new economic charter" affirmed the right to work. It was felt that "this could be realiasable ideal only if we move towards the establishment of an economy in which agriculture and cottage and small industries have primacy and are not sacrificed to the big machine and big city." The large-scale industry would be confined to production of goods not otherwise possible or for defence needs. The property right was proposed to be deleted from the Fundamental Rights leaving this as an ordinary statutory right, the object being to ensure economic reforms, such as land reforms, were not held up. The Party believed that "it is possible to eliminate destitution within a decade" by raising every family above the poverty line, and would attempt to achieve the objective "through appropriate economic policies that promote self-employment and provide employment, education and social services to every citizen." Priority was to be given to agriculture and rural reconstruction "which must constitute the base of our development planning." Landlordism was to be abolished and holdings below 2.5 hectares were to be exempted from payment of land revenue.

The Janata Party's foreign policy would reflect the nation's enlightened interest and its aspirations and priorities at home. It would oppose all forms of colonialism, new-colonialism and racialism. It stood "for friendship for all." The manifesto affirmed the party's commitment to genuine non-alignment free from attachment to any power bloc. It would strive for the peaceful settlement of all international disputes and work with other Third World nations to establish a new and just international economic order. With India's neighbours, the Party would strive to resolve such outstanding issues as remained pending or unsettled and would consciously promote a "good neighbour policy." It stood for regional cooperation for the common good and for global detente free of new blocs or spheres of influence and based on universal and general disarmament.

The four combining parties for purposes of elections to the House of the People (Lok Sabha) formally merged into the Janata Party on May 1, 1977, the Congress for Democracy, led by Jagjivan Ram, joining on May 6. It was polarisation of the political forces the need for which had originally become articulate after the Uttar Pradesh elections in 1974. The Bharatiya Kranti

19. *The Tribune*, Chandigarh, August 2, 1977.

Dal (BKD) President Charan Singh summoned a convention of non-Communist Opposition parties to consider the possibilities of merging the various parties and groups into a single cohesive political party which should provide an alternative to Congress. The merger decision, first announced on April 1, 1974, led to a rift in the Bharatiya Kranti Dal and the Swatantra Party, the remnants repeatedly questioning the groups' voluntary dissolution. Minoo Masani and the Tamil Nadu Swatantra unit also revolted. Congress (O), Jana Sangh, Muslim League, DMK and the Akai Dal had their own reservations and, finally, they could not be persuaded to merge and form a new party. But as a result of the ceaseless efforts of Charan Singh and Biju Patnaik, the Bharatiya Lok Dal was formed in August 1974 by the merger of seven non-left parties. Welcoming the formation of the Bharatiya Lok Dal, Acharya J.B. Kripalani said that the Dal should put all ideologies and programmes on the shelf.

The main problem that confronted the Janata Party after a little more than two years of the final merger of five parties was the inability of its leaders and the constituent parties to forget their pre-merger political identities. The words 'constituent' and 'erstwhile' to identify former units of the Party recurred with increasing frequency and not even an attempt at the fiction was made that the Janata Party was undivided. Jayaprakash Narayan frankly stated that the groups and parties that had joined the Janata Party "have yet to forget their past allegiances and the party has yet to function as a well-knit body." He, however,expressed the hope that the party would be able to overcome their "internal feuds as they had no alternative and would be finished if they broke up." C.B. Gupta and Jagjivan Ram also spoke out and Gupta even threatened to quit the Janata Party unless something was done to correct a situation wherein "profession and practice differ so blatantly—even in the beginning..."[20] Jagjivan Ram was forthright when he observed that the Janata Party was still a conglomeration of different groups which had failed to merge their identities with the new Party. He added, "It seems these groups will think of their narrow interests even after five years when, in the event of elections, they will demand their shares of representation."[21]

There was an apologetic reference to teething troubles and, rather more sophistically, to the contention that differences were the normal features of a healthy democracy; the same old argument that the Congress had advanced when factionalism plagued it at every level. But the Congress was a more homogeneous organisation and its aggregative capacity was more. It consisted of diverse groups, interests and factions between which compromise, although difficult, proved possible until very recently. But ideologically there was nothing common among the merging units of the Janata and despite the earnest wooing of Charan Singh they could not earlier be brought together in Bharatiya Lok Dal. Not even an effort was made to extinguish former identities. Indeed on the contrary there was an assertion of their rights and grievances. The scramble for assembly tickets in June 1977 elections, for ministerial posts and for Party offices and endless exchange of accusations within the party were alarming. A recital of the Janata infighting in Uttar Pradesh and Madhya Pradesh and elsewhere was superfluous when considered in the context of fisticuffs that occurred in West Bengal, Rajasthan and Punjab and severe tension which developed between secular and communal elements.

This sort of thing seemed endemic to the Indian political scene, but in odd juxtaposition to the Janata's assurances of a "total revolution." The Janata spirit evaporated soon after the poll victory in March 1977, and the central leadership was to be held responsible for it. "The first sin, " as Inder Jit wrote, "was committed when the time came to choose the leader of the Janata Parliamentary Party. Some of the groups met in quiet conclaves to determine informally who should or should not be backed for the Prime Minister's office. A dismayed J.P. tried to remedy the situation following his arrival in New Delhi, but succeeded partially."[22] Jagjivan Ram and his men of the Congress for Democracy not participating. Once this hurdle was crossed the constituent units of the Janata, as they then were, started functioning aggressively and soon each was demanding an equal (or reasonable) share in the Union Cabinet. The top leadership decided on a quota system for the first Cabinet list, two each for the constituent units and for the independent Chandra Shekhar- Dharia group and one for the Akalis with whom the Janata was in alliance in

20. *Indian Express*, New Delhi, July 24, 1977.
21. *The Statesman*, New Delhi, July 20, 1977.
22. *The Tribune*, Chandigarh, August 2, 1977.

Punjab.

This was the beginning of the "rot of group functioning" and it spread with all the unfortunate consequences and many even hazarded speculation about the future of the Janata Party. The National Executive of the Janata Party was named on quota and so was the Executive of the Parliamentary Party. Even the General Secretaries for both the organisational and ministerial wings were appointed on the quota basis. That was not all. "Fuel is now proposed to be added," wrote Inder Jit, "to the fire through a provision of the constitution framed for the Janata Parliamentary Party." This provided for elections to the party executive on the basis of proportional electoral device designed to give representation to various parties and groups which otherwise would have remained unrepresented. It has no place in the context of an integrated party for the purpose of its internal elections, except to breed groups and, if some exist already, to perpetuate groupism and, thus, create a body riddled with vested interests.

Another ticklish issue that immediately confronted the Prime Minister was the expansion of the Union Ministry. For months when the Janata Party assumed office, the Council of Ministers consisted of the nineteen Cabinet Ministers sworn in March 1977. On the calculation that there would be an expansion shortly after the budget session the various groups in the Parliamentary Party were working on their strength and their claims accordingly. In terms of the parties which comprised the ruling formation, the Congress (O) was regarded as over-represented compared to the BLD-Jana Sangh combine which was believed to be the largest single group. Representation of Muslims was another problem.

The dictionary meaning of the word "merger" is synonymous with absorption. But at no stage the seed of absorption was allowed to germinate and make Janata a well-integrated party. It is true, emotional integration does take some time, for merging units have to overcome their sense of insecurity. A Janata leader explained, "the Ganga and Jamuna meet at a sangam in Allahabad. But the waters of the two rivers retain their colour and identity for quite some distance." But not in the manner in which Janata Party functioned. Selfishness, sectarianism and narrow-mindedness had no place whatever in the organisation whose leaders swore by Gandhian Principles.

The Janata Party did not function even as SVD (Samyukta Vidhayak Dal), an innovation of 1967, but a loose SVD. In the SVD each constituent at least knew where it stood *vis-a-vis* the others. But in the Janata Party no constituent unit knew what precisely its position was. Power can combine even desperate elements together for some time but not for ever and this element essentially accounts for the withering away of the Party of Jayaprakash Narayan's dream who had expressed even from his death-bed his sorrow and deep anguish on the functioning of the Party. He predicted its demise if the Janata did not mend itself by halting groupism and if the drift was allowed to go beyond a point of no return. It proved true and the Janata Party disintegrated by three successive splits. Raj Narain formed the Janata (S) after he was asked to quit the cabinet. Charan Singh's defection was stabbing at the back. He was the Deputy Prime Minister No. 1 in the Desai Government and wrecked the Janata Party to become Prime Minister. It was the fulfilment of his life's ambition. Charan Singh formed his own Lok Dal and Raj Narain's Janata (S) merged with it.

No less was Morarji's contribution to the disintegration and decline of the Janata Party. Within the first year of Janata's tenure in office, it was more than evident that Desai's leadership was inadequate. The public disenchantment was openly shared by important Ministers who began to speak of Janata's non-performance. Through all this Desai remained unmoved and unmoving until he was face to face with defeat on a vote of no confidence. Even after the resignation of his Government, he did not resign from the leadership of his Parliamentary Party until compelling circumstances (inclusion in his list of supporters submitted to the President were found to contain 21 number of Congress members of Parliament) forced him to quit politics. But it was too late then for the new leader of the Janata Party to restore its image. Desai spent all the store of political goodwill with which Janata Party had begun in his bid to attain Prime Ministership. No one can dispute that throughout his political career Morarji Desai was mad for power. But there was no method in his madness. What else could one think of Desai's statement that he saw nothing wrong in making government with Mrs. Gandhi's support if it came unsought.

In the 1980 Parliamentary elections the battered Janata could secure just 31 seats (Bihar 8, Gujarat 1, Haryana 1, Karnataka 1, Madhya Pradesh 4, Maharashtra 8, Rajasthan 4, Uttar

Pradesh 3, Delhi 1). In March 1980, Jagjivan Ram quit Janata to form the 'real Janata' and then suddenly realised that it was a grave mistake that he committed by joining the Janata Party. Next month (April 1980) its Jana Sangh constituent and some others formed a new party, Bharatiya Janata Party. With this fifth split, the Janata Party, did not dissolve. But its existence could no longer be of much consequence. The fifth split was the most serious blow to what was created in 1977. The Party was undoubtedly much weakened when the Bharatiya Lok Dal group broke away, but it survived as a just credible political force. When Jagjivan Ram and his followers left, what was damaged was more than party's reputation than its organisational strength, which derived largely from that of its Jana Sangh component. But Jana Sangh's withdrawal and forming a separate party left Janata, with a few prominent and several not so prominent politicians, with little effective following.

The Janata Party is at present in total wilderness, though still hugging the fond hope that by intensive nursing of the people, it can become an alternative to Congress (I). It is, however, doubtful if the spirit of 1977 can be recaptured. It remains the amalgam of a few nationally recognised names but it has not been able to identify its ideological base in terms of the economic policies and political appeal.

The 1996 elections of the House of the People (Lok Sabha) elected a hung Parliament. The Bharatiya Janata Party was the largest Party in the House but it could not muster support from any other Party and the President had no other alternative but to call the leader of the Bharatiya Janata Party to form the Government. But this minority Government remained in office just for13 days when it resigned as it could not face the vote of confidence as all other parties had combined to defeat the non-secular government. It consequently offered an opportunity to a combine of 13 parties, Janata Dal taking the lead to form the Government with the avowed support of the Congress from the outside. But the life of the UF Government seems to be precarious with the election of Sita Ram Kesari as the President of the Congress and the leader of the Congress Parliamentary Party. Sita Ram Kesari has declared that the support of the Congress to the UF Government ought not to be taken for granted. It will depend upon the issues and their merit being consistent with the policy of the Congress.

(3) The Communist Party

The Communist Party rose in the course of India's struggle for freedom as a result of the Indian revolutionaries who drew their inspiration from the Great October Revolution. "The Communist Party of India," reads the Party's Constitution "is the political party of the Indian working class, its vanguard, its highest form of class organisation. It is a voluntary organisation of workers, peasants and of toiling people in general devoted to the cause of socialism and communism." The aim of the Communist Party is the achievement of power by the working people; the establishment of a people's democracy led by the working class, based on the alliance of the working class, and peasantry, and the realisation of socialism and communism. Its programme includes defence of the vital interests of the masses, steady improvement in their living conditions and abolition of social and economic inequalities. It fights against all obstructionist conceptions and practices such as communalism, caste, untouchability and the denial of equal rights for women. "The Communist Party upholds freedom of conscience and the rights of all minorities. It fights for rights and welfare of the people of tribal areas.....Fighting against all separationist and disruptionist trends and movements the Communist Party struggles for balanced development of all regions, for equality and equal treatment for the people of all linguistic regions as a sure foundation of Indian unity."

The 1967 Election Manifesto outlined the programme for immediate measures. With the implementation of this programme the Communist Party intended to save the country from "the present crisis, stimulate production in industry and agriculture, ensure at least minimum needs of living life, strengthen and extend democracy and avert the danger of India falling a helpless victim to American neo-colonialism." The broad features of the programme were total elimination of foreign monopolies, annulment of all collaboration agreements, taking over by the State of all foreign trade, effective measures to curb the monopolists and to break up in particular the 75 monopoly houses exposed in the Monopolies Commission Report, replacement of the Fourth Plan by a People's Plan, nationalisation of banks, mopping up the accumulated wealth of the monopolists and former princes, overhauling the entire present tax structure, abolition of land revenue to be replaced by a steeply graded tax on

agricultural incomes, with exemption for all uneconomic holdings, democratisation and reorganisation of the public sector, assurance of minimum need-based wage, enforcement of effective and far-reaching land reforms, wider power and authority, particularly in economic and financial matters, to be given to the State.

The party believed that in order to ensure rapid and faithful implementation of urgently needed democratic reforms the first step was to clean up and overhaul the State administration. With this end in view the parliamentary system should be strengthened by abolishing the Emergency powers of the President and his power to dismiss a State Government so long as the latter enjoyed the confidence of the Legislature. The institution of the Governor should be abolished and the costly and superfluous Upper Houses be substituted by Standing Committees with representatives of all parties. Proportional representation should be introduced.

In the 1971 elections the Party raised a battle cry for the rout of "right reaction" and an appeal was made to the electorate to bring about a new House of the People (Lok Sabha) which should have a firm left and democratic reorientation and was committed to effecting basic changes in the Constitution. The Constitution must be amended to place Parliament's supremacy and the will of the people, expressed through Parliament, beyond all challenge by the Judiciary, including the Supreme Court. This implied, the manifesto explained, that Parliament must resume its power to amend the Chapter on Fundamental Rights. The Constitution should also be amended to make it obligatory on the part of the Judiciary "to interpret legislations for social and economic changes, not for restricting their scope or for protecting the vested interests, affected by them, but for the promotion of social justice and progress." The Judiciary must be guided by the Preamble and the Directive Principles of State Policy in dealing with such measures. The Party emphatically reiterated its earlier stand for the abolition of the posts of Governors and Upper Houses of the Legislatures both at the Centre and in the States, drastic revision of the Emergency powers, particularly those that affect the democratic rights and weaken democracy. Ironically, the Communist Party of India gave an all-out support when in June 1975, internal Emergency was proclaimed.

The Party re-affirmed its well-known position on major economic and political issues. In subsequent years it advocated the takeover of the wholesale trade in foodgrains and other essential commodities and nationalisation of textile, sugar and jute industries and all banking business. The Party's hostility towards the United States of America in the field of foreign policy had been its stand all along. The Party called upon the voters to give a clear mandate in favour of "progressive and democratic forces", and to defeat the "reactionaries," without defining precisely what did it want.

The methods of the CPI to achieve its objective had all through been the familiar agitation, direct strike and sabotage. But consistent with the changes in the Soviet Communist Party thesis, it was admitted that in India, too, a peaceful social change was possible and where a parliamentary system existed the transformation of the capitalist community could be achieved without violent revolution. Accordingly, the CPI amended its constitution by providing, "the Party strives to achieve full democracy and socialism by peaceful mass movement, by winning a majority in Parliament and by backing it with mass sections, the working class and its allies can overcome the resistance of the forces of reaction and ensure that Parliament becomes an instrument of the people's will for effecting fundamental changes in the economic, social and state structure."

The Party's electoral prestige has steadily declined. In the 1980 election to the House of the People it won only 10 seats. Dange's relinquishing the Presidentship of the Party and formation of a separate faction (Dange group) had weakened the party base and its credibility. The CPI and the CPM, each for its own reasons, are coming closer to each other. The CPI Central Executive, at its session in January 1981, made the formation of a nation-wide "left and democratic front" its major plan. The Party did not show signs of softening its hostility to Mrs. Gandhi's Government. Ever since the Emergency experiment, the CPI no longer believed that the Congress (I) represented the "progressive bourgeoisie." While Moscow remained favourably disposed to Mrs. Gandhi, as was reflected in Brezhnev's visits to India, it did not seem to have influenced the CPI's attitude. All the same, CPI has been dwarfed by the CPM and it feels safer in a "left and democracatic front" than in a purely "left front" where the CPM's greater strength and electoral prestige would inevitably make itself felt to its disadvantage.

(4) Communist Party (Marxist)

There was split in the Communist Party of

India after the Vijayawada Congress of 1961. The split in the Communist movement, according to the Communist Party's Election Manifesto (1967), had seriously affected the mass movement as well as the struggle for forging broad unity of the Left and democratic forces. The Communist Party of India, the Communist Marxists claimed was a group of Dange revisionists out to pursue their opportunity line of class-collaboration. Taking advantage of the bourgeois chauvinism raised in connection with the India-China conflict, the revolutionists "joined hands with the bourgeois landlord government (Congress) to open the country to American penetration, the dire effects of which they are seeing today." The revisionists (Communist Party of India) had neither ideologically nor organisationally, they asserted, any right to call themselves by the old name. The Communist Party of India (Marxist) is the only party that stood firmly and constantly for socialism. It rejected the Communist Party's commitment to the "parliamentary road to socialism" and most important was the replacement of the work-cell as the basic unit by the residence-based branch.

The Communist Party (Marxist) aims at socialisation of the means of production and this can be achieved under a proletarian State alone. It is in the proletarian State that the exploitation of man by man can be abolished and, thus, help to solve the problems of poverty and impoverishment. The Party firmly believes that the road to socialism can be opened only through the establishment of a State of People's Democracy led by the working people and replacing the present bourgeois-landlord State, led by the big bourgeoisie. This can be achieved by developing determined mass struggles on the basis of growing unity and consciousness of the people. The party works determinedly for organising people's struggle for livelihood, democracy and power. It believes and advocates in *bandhs, gheraos* and student struggles. The 1967 Election Manifesto of the Party said, "The mighty Bengal Bandhs, the Kerala, Bihar and U.P. bandhs have set the pace for the new movement. Millions have participated in these struggles and braved the firing squads of the police to defend their livelihood and liberties. These have been followed by the mighty wave of student struggle of the working class, salaried employees and finally the employees of the government ..... Never before since independence India witnessed such mighty struggles." The Party, the Manifesto further said, "with its militant and revolutionary tradition calls upon the people to rout the Congress and endorse the Party's electoral programme which alone shows a way out of the present critical situation."

The Party stands for the sovereignty of the people, annulment of the Emergency powers of the President, proportional representation, regional autonomy for tribal areas, an equal right for all citizens, equality of all languages, widest autonomy of the States comprising the Union of India, and abolition of the institution of Governors. The role played by Governors showed, the 1971 Election Manifesto of the Party said, that they invariably act as the instrument of the Centre against the people of the States and powers of the President enable him to take over the administration of a State for months and run it without the consent of the people. In order to make the powers and functions for the State real, it demands transfer of the subjects in the Concurrent List of the Seventh Schedule to the States, a larger allocation of resources to the State including a share of 75 per cent of all Central taxes, and complete control of a State Government over all its officials belonging to All-India Services.

The Party directed sharp criticism on the Judiciary and maintained that the courts must function as the instruments of the peoples' will and not as instrument opposing popular progress. The people should have complete freedom to dispense with the services of the judges who hold up the march of progress. On the economic side the Party stands for taking over the landlord's land and its distribution among agricultural labour and poor peasants gratis, cancellation of debts owed by peasants, agricultural workers and small artisans, equitable distribution of food to the people of urban and rural areas, State trading in foodgrains and entire surplus of the produce of landlords and rich peasants to be compulsorily procured. Effective price control is sought through nationalisation of banks, State trading in foodgrants etc. Drastic reduction in taxation is proposed and taxation on all necessities of life is to be abolished. The Party proposes reduction in defence expenditure, abolition of land tax, irrigation cess and other cesses and surcharges on uneconomic holdings. The Party will stop all further American aid, impose moratorium on all foreign payments, nationalize all foreign trade, and all foreign capital in plantations, mining, oil refineries, shipping and trade.

With relation to internal trade and commerce the Party champions nationalisation of banks, monopoly concerns and other big industry wherever necessary. It advocates a people's economic plan of development and urges that, if returned to power, development of public sector with the utmost rapidity will be undertaken, and the private sector and profits therefrom will be strictly controlled.

In international relations, the Party stands for independent foreign policy based on opposition to imperialism, especially American imperialism, colonialism and neo-colonialism and support to all freedom struggles. It believes in and supports the policy of co-existence and friendship with the peace-loving countries and a firm solidarity with Afro-Asian people. Break with British Commonwealth is its avowed object. It firmly believes and will strive for a peaceful settlement of dispute with Socialist China and creation of friendly relations with China in the interest of Asian freedom, of all disputes with Pakistan and promises "revision of all cultural agreements with foreign countries with a view to eliminating all those provisions that enable foreign powers to penetrate into the social and cultural life of the nation." The Party is also pledged to take new initiatives to organise common struggle of all the anti-imperialist countries, particularly those of Asian and African against the increasing penetration of the American, the West German, Japanese, and the imperialist powers in the economy, political life, cultural activities and in the military affairs of the newly independent countries.

The 1977 manifesto was essentially an indictment of the Congress Government for proclaiming Emergency, enactment of the Forty-second Amendment and the untold sufferings of the people during the nineteen months of Emergency. It called upon the electorate to unmask the efforts of the Congress Government to make the world believe that the Indian people are not willing to accept the dictatorship of the Congress Party by voting everywhere against the Congress policies on all fronts. "It is the task of the left and democratic forces to put before the people a comprehensive programme to defend the people and their liberties."

The CPI (M) put forward the following programme and called upon all Left and democratic parties and forces to rally round it and vote against Congress policies :

(1) Release of all political prisoners and withdrawal of warrants, repeal of the 42nd Constitution Amendment and other repressive laws like MISA and the Press Objectionable Matters Act; (2) Takeover of foreign capital, ban on entry of multinationals and investment of private foreign capital; (3) Moratorium on foreign debt payment; (4) Nationalisation of monopoly houses, nationlization of sugar, textile, jute, cement and drug industries; adequate financial and other assistance to small and medium industries; (5) Takeover of foreign trade; (6) Ending of corruption and bureacratism in the public sector undertakings; (7) Restoration of democratic and trade union rights and collective bargaining through trade unions whose representative character must be decided by secret ballot of the workers; need-based minimum wage and full neutralization of the rise in the cost of living; withdrawal of the Bonus Act; measures against victimization; (8) Abolition of landlordism by taking over the entire land of the landlords and labourers and poor peasants; Cancellation of debts of peasants, landless labourers and rural poor and provision of adequate and cheap credit to them; supply of inputs and essential articles at cheap rates to them; remunerative prices for their produce to be ensured through government purchase; lowering of taxes and other levies on the peasants, firm measures against social oppression of Harijans; (9) bringing down of prices by drastically reducing taxes and levies on essential articles; State takeover of wholesale trade in foodgrains and the essential articles and their distribution under supervision of People's Committees; compulsory procurement of all the marketable surplus of foodgrains of all landlords; (10) Right to work to be made a fundamental constitutional right, and (11) Compulsory free education up to the age of 14 and eradication of iliteracy; and (12) A foreign policy of consistent anti-imperialism and close co-operation with Socialist countries.

The CPI (M) established itself as a major party in West Bengal and Kerala, where it became the dominant party in the United Front Governments which emerged from the 1967 elections. Subsequently, it received setbacks in both States. In West Bengal it was challenged by the Congress and outflanked by a third and even more revolutionary Communist Party, the Communist Party (Marxist-Leninist). In Kerala, it was forced to yield office to a CPI-led Government, enjoying Congress (R) support. In 1971, CPI (M) secured only two out of nineteen House of the People seats whereas in 1977 it won none. In West Bengal the

CPI (M) had a setback in 1971 elections and its tally was 24 against 29. In 1977 the party went in for alliance with the Janata Party and secured 17 seats. But in the Assembly elections it went alone and for the first time came into power in its own right and continues in the saddle since then. It routed both the Janata and the Congress in January 1978 elections in Tripura and formed the Government and continues to be in office.

Most of the Communist success, electorally and otherwise, has been achieved in areas with high literacy rates and high voting turnouts. The educated unemployed provide them with a high proportion of consistent support. Like other parties, the Communists, too, have marked caste affiliations in certain areas. Oddly enough, their supporters are by no means invariably at the bottom of the social scale. in Andhra, for instance, they formerly had the support of the Kammas, a caste which included many substantial landlords.

The CPI (M) has also given priority to the question of forming a "left and democratic front," thus, shedding some of its hesitation on this issue. Substantial sections within the important West Bengal unit were hostile to Congress (U) and the Janata, the two partners in the proposed alliance. But the organisational wing of the Party was pressed to fall in line with the national policy. It, however, has nothing in common with the Bharatiya Janata Party which is regarded fundamentally communal party. The CPI (M) by more or less repudiating Chinese foreign policy had also moved closer to the CPI in its assessment of the international scene. But the Question of unity between the two wings of the Communist Party is a misplaced speculation. It came into power in its own right and coutinuous to remain in the saddle since then. West Bengal does not change colours easily. After 14 years of CPI (M)–led Left Front the red bastion emerged victorious again in 1991. CPI (M) secured 188 seats, CPI 16 and others 57. The Congress (I) came a poor second with 43 seats out of total of 294 Assembly seats. The CPI (M)-led Left Democrtic Front (LDF) lost to the Congress (I)-led United Democratic Front (UDF) in the State of Kerala. The CPI (M) won 29 seats only out of a total of 140 seats in the State Assembly.

The disintegration of the Soviet Union and collapse of communism there and the East European countries had no impact on the policy and strategy of CPI (M). The Party still steadfastly adheres to Marxism-Leninism and holds Mikhail Gorbachev responsible for the whole debacle. That is the crux of the Party's policy resolution at its Madras session in January 1992.

THE ELECTION COMMISSION

The Electoral Machine

Elections are central to the functioning of modern democracies as they constitute the principal mechanism for exercising the control of the people on their representatives and give legitimacy to govern in a democratic system. Free and fair elections are the *sine qua non* of the democratic system and as a consequence thereof the machinery of conducting elections and the personnel manning it assume key importance in a country's political life.

India incorporates such a system in the Constitution and in the various legislative measures enacted pursuant to the constitutional provisions. There are certain basic elements in the electoral system, namely, universal adult suffrage which entitles every citizen who is not less than eighteen years of age, provided he is not otherwise disqualified, the right to be registered as a voter. Then, there is the principle of 'one man one vote' and the method of direct election to the House of the People (Lok Sabha) and the Legislative Assemblies of the States. There are adequate provisions to ensure participation of the deprived sections of society (Scheduled Castes and Scheduled Tribes) by reserving constituencies for them. The management and conduct of elections on such a large scale, as in India with 520 million eligible voters in 1992, is entrusted to an independent Election Commission and it has been accorded Constitutional status. Efficiency, impartiality and adequacy of the Electoral machinery, thus, provide for free and fair elections, without them elections lose their savour and it becomes a futile exercise in the realm of a democratic system. Recent elections held in November 1989 and May-June 1991 have, however, cast apprehension on the office of the Election Commission, as a weak, ineffective and a partisan institution. The large-scale violence, both capturing and unbecoming malpractices together with muscle and money power are a black spot on the electoral machinery in India.

ELECTION COMMISSION

Apex Body

The superintendence, direction and control of preparation of the electoral rolls and the conduct of all elections to Parliament, State Legislatures, and of elections to the offices of the President and Vice-President under the Constitution

are vested in the Election Commission consisting of the Chief Election Commissioner and such number of the Election Commissioners as the President may from time to time fix.[23] The appointment of the Chief Election Commissioner and the Commissioners is made on behalf of Parliament. When any other Election Commissioner is so appointed, the Chief Election Commissioner acts as Chairman of the Commission. Before each General Election to the House of the People and to the Legislative Assembly of each State and biennial election to the Legislative Council (Vidhan Parishad) of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of its functions.

The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners are determined by the President by Rule. The Chief Election Commissioner is liable to be removed from office in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of his service cannot be varied to his disadvantage after his appointment. Any other Election Commissioner or Regional Commissioner shall be removed from office on the recommendation of the Chief Election Commissioner.[24]

Two Regional Commissioners were appointed for a period of six months during the General Election held in 1951-52 and since then no such appointment has been made. Except on two brief occasions, there were Deputy Election Commissioners in the Commission. The Commission has one Deputy Election Commissioner at present. The Commission has its own nucleus of staff.

Subordinate Officers

Among the subordinate election officials are the Chief Electoral Officers for each State to aid in the preparation of the electoral rolls. Others include Electoral Registration Officers, revising authorities for deciding claims and objections to the draft electoral rolls, and Returning Officers (and Assistant Returning Officers) for conducting elections in each constituency. They all are drawn from the higher cadres of Government employees in each State. In addition to these, there are thousands of presiding officers, polling officers and others for conducting the polls. For the election of 13 members to the House of the People (Lok Sabha) and 117 Members of the Legislative Assembly in the State of Punjab in February 1992, more than 94,000 personnel of different categories were drafted.

In the process of amending the election laws and statutory rules, the role of Chief Electoral Officer in a State has been expanded and as a result the Election Commission has acquired the major responsibility for his election. In the initial stages, the Chief Electoral Officers were appointed by the State Governments. Subsequently the changes in the Rule redefined this officer "appointed by the State Government with the concurrence of the Election Commission." Provisions in the two amending Acts of 1956 clearly specified that the selection of the Chief Electoral Officer in a State would be made by the Election Commission. At the same time, authority has been delegated to the Chief Electoral Officer in each State to supervise election procedures from the early stages of preparing and revising electoral rolls. The initial responsibility for supervising the conduct of elections now rests with the Chief Electoral Officers, subject to the "Superintendence, direction and control of the Election Commission."

ELECTORAL REFORMS

The necessity of reforming the electoral system is as old as the first 1951-52 General Election. But it did not take a tangible shape. Nor had any voice been raised from the non-ruling parties against this basic exercise of democracy and the problem as it has aggravated over the years. When the National Front Government, headed by Vishwanth Pratap Singh, the Janata Dal Parliamentary party leader, assumed office in 1990, it appreciated the urgency of the problem and appointed a Committee chaired by the then Law Minister Dinesh Goswami to study in details the problem of electoral reforms and make necessary recommendations. In pursuance of the Goswami Committee recommendations three separate Bills were introduced in the Council of States (Rajya Sabha). The Bills could not make any headway and are still pending there and are

23. In 1989 the one-member Election Commission became a multi-member body with the appointment of two other Election Commissioners, S.S,. Dhanoa and V. Seigell, both former civil servants, the first from I.A.S. and the second form IPS. The multi-member Election Commission however, remained in existence just for 79 days, and once again it became a one-member Commission.
24. Article 324.

likely to be allowed to lapse. Law Minister Vijaya Bhaskar Reddy in the Narasimha Rao Congress (I) Government had repeatedly assured the Parliament that the Government was serious about electoral reforms and would soon introduce a comprehensive Bill.

Piecemeal Electoral Reforms

For the present, the Government resorted to issuing Ordinances and that, too, in a piecemeal manner incorporating some reforms which the political expediency demanded. The first in the series of these Ordinances was the one issued on January 4, 1992. The Government had first decided to move for consideration one of the three pending Bills in the Council of States (Rajya Sabha) and informal consultations were held with the Opposition leaders. But for some inexplicable reason the Bill did not find a place in the Official Legislative Business and the Ordinance was issued in an attempt to bypass Parliament and was occasioned by the proposal initiated by the Government to hold elections in the State of Punjab after a gap of 57 months President's rule in that State.

The Ordinance provided that Parliamentary and State Assembly elections would not be countermanded if an Independent candidate died before the poll. The Law Minister said in a Press interview that the Punjab Government had been keen on the amendment of Representation of the People's Act so that the elections in the State slated for mid-February 1992, were not affected owing to terrorist violence against Independent candidates. Militants shot dead 23 candidates during the campaign period in May-June 1991 propsed elections. This led to the countermanding of the involved Parliamentary and Assembly seats.

The second Ordinance to amend the Representation of the People Act curtailed the time for election campaigning from 20 days to 14 days. While it may be welcomed by various political parties so far as it helps in the present Punjab situation, the political parties may subsequently find it impractical to cover the vast Parliamentary constitutencies in a short span of 14 days. It may not be possible for a candidate to contact personally the electorate in his House of the People (Lok Sabha) constituency, which often has one million votes. And in India, personal contact during electioneering has its personal appeal and the technique is well entrenched.

But that is not the end of electoral reforms. The focus in fact should be on the larger question of regulating the proliferation of non-serious candidates who have severely burdened and trivialized the electoral process. There were over 5,000 Independents in the 1991 House of the People (Lok Sabha) polls, a majority of whom were in a fray only for cheap self-publicity. Previous Election Reforms Committees have proposed numerous amendments to tackle the problem of multiplicity of candidates including a substantial increase in the security deposit; not allowing a candidate to contest more than one constituency; and the most radical though innovative alternative, to disqualify a candidate from standing in an election for some time; if he failed to secure one-fourth of the total number of votes cast. Law Minister Vijaya Bhaskar told the PTI correspondent in an interview on December 29, 1991, that the Government was considering ways and means of preventing "frivolous" candidates from entering the election arena. One of the proposals, he added, was to make a provision that every candidate is sponsored by at least ten elected members of either of Panchayats or cooperative societies; not a difficult requirement in the final analysis under the prevailing political climate in India.

He also said that a legislation for fresh delimitation of the House of the People (Lok Sabha) and State Assembly constituencies was ready and would be introduced in the Budget session of Parliament commencing on February 24, 1992.[25] While there will be no increase in the total number of seats at both the levels of the Legislature, there would be changes in the reserved seats, he added. Those seats would be rotated from a constituency where the Scheduled Caste and the Scheduled Tribe votes are the highest to the second highest.

One of the Bills on electoral reforms pending before Parliament was about the composition of the Election Commissions whether it should remain one-man body, as it is, or more than one-member, to ensure greater impartiality. This is now one of the pressing demands of the Opposition parties. The National Front and the Left Front are its vocal advocate. This combine submitted on March 4, 1992 a notice, signed by 122 Members of Parliament, to the Speaker to move a motion of impeachment against the Chief Election Commissioner, T.N. Sheshan, for his "mis-

25. Constitution (Seventy-first Amendment) Act, 1992, provides for fresh delimitation on the basis of 1991 census. Thus, the embargo that was placed by the Forty-second Amendment Act, 1976, has been removed.

behaviour, and illegal, partisan and arbitrary actions", during the conduct of the various elections held during his tenure.[25a]

Moreover, a single individual at the helm of affairs is not a very satisfactory arrangement for controlliing the expanding work of the Election Commission, especially with the addition of some 50 million voters consequent on the lowering of voting age to 18 years. Also there seems to be a possibility that the Election Commission may be entrusted with the onerous job of conducting Panchayat Raj polls. A measure of reform should be to keep the Election Commission a three-member body manned by persons of exceptional integrity and proven calibre.

But neither of the three Bills pending in Parliament nor the latest Ordinances that had been promulgated in pursuance of electoral reforms deal directly with the basic distortions of the electoral process. They represent no counter to the money and muscle power so widely rampant at all levels of elections of the legislative and local bodies and continue to manipulate the popular mandate, or to the often grossly misused might of official machinery.

When democracy becomes corrupt, the best gravitate to the bottom, the worst float to the top, and the vile is replaced by the more vile. Henry George's words seem prophetic if one looks at the composition of the 1991 elected members of the Bihar Legislative Assembly to illustrate the magnitude of the problem. At least 40 of 323 legislators have proven criminal record and 10 out of this number are hardened criminals. They belong to various political parties and were elected by margins that many of the State's top respected and veteran leaders cannot boast of. Other States, as Utter Pradesh and Madhya Pradesh do not sufficiently lag behind, though in numbers they stand no comparison to the State of Bihar. One of the former Ministers, belonging to the Janata Dal (Samajwadi) party in Uttar Pradesh, was arrested on the basis of heinous criminal offences and he contested for the State Assembly seat in the 1991 elections while lodged in the jail and won by a thumping majority.

The criminal politician nexus, which flowered in 1977 when both the Congress (I) and the Janata Party gave tickets to criminals in their eagerness to capture the maximum number of seats both in the House of the People (Lok Sabha) and the State Assemblies that went to the polls, has in the last decade and half become an accepted fact of political life in India, importantly in the States of Hindi-belt.

ANTI-DEFECTION LAW

In Retrospect

The defectors had plagued the Indian politics since the Fourth General Election in 1967. Not that it was a new phenomenon peculiar to India, but the dimensions it assumed and the ugly form it took for ministerial rewards in return was unprecedented and it has now become an integral part of the country's political life. In one single year 438 legislators defected with 210 being rewarded ministerial berths. Over the period March 1967 to August 1970, the Governors' Committee (1971) headed by Bhagwan Sahay reported 1,240 defections, with a sample showing rewards of ministership in one-fifth of the cases. Ministries tumbled with ease, supported by unscrupulous Governors with avowed leanings towards a particular political party, which at that point of time was the Congress. The concern for such a state of affairs was voiced in the House of the People (Lok Sabha) and was reflected in the debates of the House on August 11, November 24, and December 8, 1967 and it led to the appointment of a high-level committee[26], with Y.B. Chavan as Chairman, to consider the problem of legislators changing the allegiance from one party to another and their frequent crossings of the floor. The Committee was required to examine this problem in "all its aspects and make recommendations in this regard."

Analysing the motives behind the change in allegiance the Committee stated in its Report : "Following the Fourth General Elections, in the short period between March 1967 and February 1968 the Indian political scene was characterised by numerous instances of changing of party allegiance by Legislators of several states. Compared to roughly 542 cases in the entire period between the first and Fourth General Election at least 438 defections occurred in these 12 months alone. That the lure of office played a dominant part in decisions of legislators of the

25A It is doubtful if the notice will fructify because the Bharatiya Janata Party has decided not to go along with the National Front-Left Front Combine. L.K. Advani, the Leader of the Opposition in the House of the People told the Press that "we are charry of resorting to extreme measures like impeachment." *The Statesmen,* New Delhi, March 5, 1992.

26. It was a distinguished committee that included Jayaprakash Narayan, Madhu Limaye, S.N. Dwivedi, P. Govinda Menon (Law Miniter) two former Attomeys-General, M. Setalvad, and C.K. Dephtary, and S. Mohan Kumarmangalam

States of Bihar, Haryana and M.P. (Madhya Pradesh) Punjab, Rajasthan, U.P. (Uttar Pradesh) and West Bengal 1165 were included in the Council of Ministers which helped to bring into being by defections....."

The Committee also took upon itself the onerous task of defining "defection." This definition, which was drafted by Jayaprakash Narayan himself, was accorded general approval of the Committee, was as follows : "An elected member of a legislature who has been allotted the reserved symbol of any political party can be said to have defected, if after being elected as member of either House of Parliament or of the Legislative Council or the Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to, or association with, sush political party, provided his action is not in consequence of decision of the party concerned."

The Report of the Committee came for discussion in the Council of States (Rajya Sabha) on August 12, 1969. Once again divergent views on remedies of defection were expressed, though everybody showed deep concern at the menace of the defections. On July 24, 1970, Union Cabinet approved a draft of the legislation on defection, which was later discussed on December 10, 1970, in a conference of Opposition leaders, convened by Prime Minister Indira Gandhi. Again, the same old line of differences of opinion was voiced and, accordingly, no agreement or consensus could be arrived at. Keeping in view the sentiments of the Opposition leaders, the Prime Minister declared that no Bill on defections would be moved in the Fourth Lok Sabha.

On May 16, 1973, Uma Sankar Dixit, the then Home Minister, sought leave of the House of the People (Lok Sabha) to move Constitution (Thirty-second Amendment) Bill, 1973, which aimed to meet the menace of defections. The Bill provided (a) disqualification of those legislators who leave a party voluntarily, and (b) disqualification of those legislators who voted in the House of which they were members in defiance of the Party Whip. The provision was considered sinister and destructive of the principle of accountability to the House of the People (Lok Sabha) and Legislative Assembly (Vidhan Sabha) of a State as also of freedom of speech and vote of legislators. N.A. Palkhivala spoke very emphatically against the Bill and considered it "truly savage", on "absurd proposition, which no Constitution of any mature nation had ever contained." He said, "No greater insult can be imagined to Members of Parliament and State legislators than to tell them that once they become members of a political party, apart from any question of party constitution and any disciplinary action the Party may choose to take, the Constitution of India itself expects them to have no right to form judgment and no liberty to think for themselves, but they must become soulless and conscienceless entities who would be driven by their political party in whichever direction the party chooses to push them. If we pass this proposed provision into law and Constitutional disqualification for a member who honestly votes or abstains from voting we shall make ourselves the laughing stock of the world."

In the wake of such a stout opposition to the Bill, both within and outside Parliament, the Government did not push it forward and instead made a motion for reference of the Bill to a Joint Committee of both the Houses of Parliament. The Bill, however, lapsed in the Committee itself, when the House of the People (Lok Sabha) was dissolved in 1977. A fresh attempt was made by the Janata Government in August 1978 to introduce the Constitution (Forty-Eighth Amendment) Bill which contained, more or less, identical provision for disqualification of a member as the 1973 Constitution Amendment Bill, that is, if he voted or abstained from voting contrary to the Party Whip. Thus, both the Bills of 1973 and 1978 sought to punish honest dissent. It was vehemently opposed by the General Secretary of the ruling Janata Party, Madhu Limaye, on the floor of the House itself. Citing the Keshavanand Bharati case, he said that the proposed Constitution Amendment Bill was against "the basic features of the Constitution. It militates against the funda- mental principles..... It is beyond the competence of this Parliament.....this is a battle between dictatorship and democracy. This is a battle between bossism and freedom of Members of Parliament.....This is the most sinister bill, that has come before the Lok Sabha (House of the People)." Madhu Limaye was not only supported by the Opposition Members but several other Members of the ruling party as well. The Bill, thus, ran into rough waters and rather than force defeat in the House, it was deemed politically prudent by the Government to withdraw it unconditionally.

The Anti-defection Act, 1985

After the 1985 elections to the House of the People (Lok Sabha) in which Congress (I) led by

Rajiv Gandhi won a three-fourth majority, the entire atmosphere was changed into euphoria. The Opposition had not been able to recover from its humiliating defeat at the polls and was nothing but a babble of tongues. The Rajiv Gandhi Government introduced Constitution (Fifty-second Amendment) Bill, 1985, on January 23 to fulfil electoral commitment of the Congress (I) to ban defections. The Bill roadrollered through the Parliament without any opposition. There were two notable objectors to the Bill, Soli Sorabjee and Madhu Limaye, both out of Parliament. The Bill was not referred to the State Legislatures for their ratification under article 368 (2). It received the assent of the President on February 15, 1985 and became operative on March 1, 1985. The Amendment Act added a new Tenth Schedule to the Constitution incorporating the provisions of what it came to be known the Anti-Defection Act, 1985. Thus, what could not be done in past more than two decades was achieved in Janurary 1985. This amendment put a seal on the "fate of a possible genuine dissent in Indian Parliamentary democracy."

The Act provides that the seat of the elected Member of Parliament or the Legislative Assembly of a State Legislature shall fall vacant on the following contingencies :—

(a) if he voluntarily gives up the membership of a political party on whose symbol he had been elected; or

(b) if he votes or abstains from voting in the House of which he is a member contrary to any direction issued by the party to which he belongs without obtaining prior permission of the competent authority of his party and such act of voting against the directive issued or abstention therefrom has not been condoned within fifteen days from the date of such voting; or

(c) if an independent member after his election joins any political party; or

(d) if a nominated member joins from the date he took oath as a member of the House to which he had been nominated. A nominated member of a House where he is a member of any political party on the date of his nomination as such member, shall be deemed to belong to such political party.

But the aforesaid provisions relating to disqualification of a member or members shall not apply in the following cases :

(i) *Party split.* Where there is a split in the political party and the member or members concerned belong to a faction arising out of such split and the group thus splitting consists of not less than one-third of the total membership of the original party in the House;

(ii) *Party merger.* Where two or more political parties have decided to merge by a two-thirds majority of the total membership of the party in the Legislature concerned.

Exemptions. The aforesaid provisions relating to disqualification shall not apply to a person who has been elected to the office of the Speaker or Deputy Speaker of the House of the People (Lok Sabha) or the Deputy Chairman of the Council of States (Rajya Sabha) or the Chairman or Deputy Chairman of the Legislative Council (Vidhan Parishad) of a State :

(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before his election and does not so long he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or

(b) if he, having given up by reason of his election to such office, his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

Decision On Questions of Disqualification

(1) Para 6 of the Anti-defection Schedule 1985, lays down that if any question arises as to whether a member of a House has become subject to disqualification, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final : Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect and his decision shall be final.

(2) All proceedings as stated above in relation to any disqualification of a member of a House shall be deemed to be proceedings in Parliament within the meaning of Article 122 (Courts not to inquire into proceedings of Parliament) or, as the case may be proceedings in the Legislature of a State within the meaning of Article 212 (Courts not to inquire into proceedings of the Legislature).

Para 7 of the Tenth Schedule is by far important. It bars the jurisdiction of courts in such cases of disqualification on grounds of defection.

It provides that "notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under the Schedule."

Para 8 of the Tenth Schedule authorises the Chairman or the Speaker of a House to make rules for giving effect to the provisions of the Schedule and the rules so framed were approved by the House of the People (Lok Sabha) on December 16, 1985. The Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 stipulated that every such petition alleging disqualification should be addressed to the Secretary-General of the Lok Sabha, containing a concise statement of the material facts against the alleged Member or Members of the Parliament. It is provided that the Speaker would seek the reply from the affected party within seven days after receiving the petition from the leader of the party concerned. The decision of the Speaker in this regard shall be notified in the Official Gazette and forwarded to the Election Commission and the Government of India. Likewise, the State Legislatures framed their own Rules and Regulations, for the application of disqualification of their respective members in cases of defections.

Evaluation of the Act

The Anti-defection Act, 1985 was widely acclaimed by the Congress (I) and some other political parties. But it suffered from serious flaws and misgivings, Neither a public debate on its specific provisions had been initiated nor any attempt was made by the Congress (I) Government to seek a consensus of other political parties in its favour. It was simply rushed through in Parliament and, as such, was widely believed that the legislation was designed to benefit the ruling party alone.

The definition of the term "defector," as contained in the Act, does not cover the honest dissenter who defies the Party Whip on a Bill to which he is conscientiously opposed and the defeat of such a Bill in the House would not effect the survival of the Government. The Constitution (Thirty-second Amendment) Bill, 1973, which aimed to meet the menace of defection, provided disqualification on two counts : (a) of those members who left a party voluntarily and (b) those who voted in the House in defiance of the Party Whip; precisely the same provisions as are contained in the Anti-defection Act, 1985. The Thirty-Second Amendment Bill which also contained similar provisions was abandoned in face of wide averse public opinion.

The Governors' Committee (1971) was opposed to legislative action to check defections and floor crossings for that would not permit genuine changes of conviction or dissatisfaction with the party and its leadership, for example, where promises or programmes remained unfulfilled. But the Committee would like the legislator or legislators who changed their party to seek re-election. "This is different," the Committee noted, "from curbing the right of dissent or change and is in essence an extension of the exercise of responsibility which is at the root of the Constitution." Morally too, in the opinion of the Committee, "This would be the right course to adopt and may certainly restrict defections prompted only by reasons of self-interest or pursuit of power."

But the Anti-defection Act, 1985, legitimises defections through the device of "party split" and "party merger." The process of both the devices is easy and for all intents and purposes is an *alibi* for defection. In case of "party split" one-third of the total membership of the party in the House if they form a distinct and separate group arising out of such split do not attract the penalty of disqualification under the law. In case of "party merger" the prescribed majority is two-thirds of the total strength of the original party in the House . As a result, there was a Government of defectors at the Centre following the defection of thirty-seven members of the Janata Dal headed by V.P. Singh. Chandhra Shekher submitted to the Speaker of the House of the People (Lok Sabha) the list of these thirty-seven members on November 6, 1991, and informed him about the split in the Janata Dal, a constituent of the National Front, and the formation of a new political party. Chandra Shekher staked his claim with the breakaway group of the Janata Dal, as "unattached," a new addition in the vocabulary of the Anti- defection Act, 1985, and the creation of the Speakar, with the outside support of the Congress (I) Party. Intrinsically speaking the Janata Dal Party and the Government formed by Vishawanth Partap Singh as its leader was also a government of defectors as almost all the members of the newly formed Janata Dal were either expelled form the Congress (I) Party or had defected therefrom. Some of the more clever out of them continued to remain members of the Congress (I) Party and either voted with the Party or abstained from

voting, though they criticised the policy of the Party both inside and outside Parliament. The Congress (I) did not venture to take action against them for tactical political reasons.

The three suggestions made by President R. Venkataraman in his speech on December 27, 1991 to the Conference of Governors, had most probably the feelings of a provenly defective, Anti-defection law which could enable just a handful of defectors, as in the case of Chandra Shekher, to assume the reins of office at the Centre. The first suggestion was that the size of the Ministry should "be limited to one-tenth of the size of the popularly elected legislators." Secondly, the defector should "be debarred from any political office, elective or otherwise, for the duration of the legislature to which he had been returned by the electorate". Lastly, he said, "In matters pertaining to the anti-defection law, judicial directives are sometimes issued to the Governor, placing that office in a situation of delicacy." The President suggested that the office of the Governor be insulated "from such piquant situations."

The problem facing the country is to devise a set of rules which will curb corruption and the corrupt practices go with it. Probity, says A. G. Noorani, "cannot be legislated, but corruption can be punished and deterred to a certain extent." The size of the Ministry is one of the patent factors of corruption. The Committee on Defection recorded in 1969 "unanimous agreement" on the recommendation to limit the size of the Council of Ministers. There was also agreement that the size of the Council should have some relation to the size of the Legislature. But the curb can be evaded by providing what President R. Venkataraman described as "a ministerial type of *sine- cure.*" It is, therefore, no less essential to put these plums of office jobs beyond the grasp of defectors. Dev Raj Urs had as many as 47 Members of the Legislative Assembly of Karnataka members of land tribunals and another 47 as members of State Boards and Corporations. Bhajan Lal in Haryana and Laloo Prasad Yadav in Bihar, during recent times are close rivals of Urs in their patronage and vitiating the country's polity.

Para 6 of the Anti-defection Act, 1985, provides that any question regarding disqualification arising out of the defection is to be decided by the Chairman or the Speaker of the House, as the case may be, and his decision shall be final. It also provides that all proceedings of Parliament and the Legislature of a State as, the case may be shall be deemed to be proceedings of the Legislature concerned and, accordingly, the validity of such proceedings cannot be called in question in a court of law on the ground of any alleged irregularity of procedure. Para 7 of the Tenth Schedule bars in clear terms the jurisdiction of the courts in respect of any matter connected with the disqualification of a member of a House under the Schedule.

The Report of the All-Party Committee on the Electoral Reforms submitted in May 1990, recorded that all political parties, except the Congress (I), felt that the power of deciding legal issue of disqualification should not be left to the Speaker. Upholding the validity of Anti-defection Act, 1985, by a 3-2 majority, the Constitution Bench of the Supreme Court ruled that the Speaker's or the Chairman's order, as the case may be, under the Act were open to judicial review. Since the Speaker or the Chairman, as the case may be, acts as a "tribunal" in giving his decision on a case of defection, Para 7 of the Tenth Schedule of the Constitution which bars the jurisdiction of the courts is, therefore, unconstitutional. It went against the stated objective of providing "a remedy for the evil of unprincipled and unethical political defections" by giving immunity to presiding officers of the Legislatures from "allegations of mala-fide and non- compliance with rules of natural justice", the Court held.

The Supreme Court also observed that "the disqualification imposed by Para 2 (1) (b) must be so construed as not to unduly impinge on the said freedom of speech of a Member." This would be possible, the Court noted, if Para (1) (b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or similar considerations."

The Court said that the stated objective could be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member was confined to cases where a change of government was likely to be brought about or was prevented by such action. In the alternative, the same could be said when such voting or abstinence was on a matter which was a major policy and programme on which the political party to which the member belonged went to the polls.

At present under Para 2(1)(b) a member incurs disqualification if he votes or abstains from

voting in the House contrary to any direction issued by the political party to which he belongs without obtaining prior permission. The Court held that the words "any direction" required to be construed harmoniously with the other provisions of the anti-defection law which define and limit the contours of its meaning. There was, therefore, no justification to give words wider meaning. The Court said voting or abstinence from voting by a member against the direction by the political party by such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got elected and, such voting or abstinence would lead to a breach of the trust reposed in him by the electorate. "Keeping in view the consequences of the disqualification it would be appropriate that the Whip should be so worded as to clearly indicate that voting or abstaining would result in incurring disqualification," the Court observed.

The majority judgment was delivered by Justice M.P. Venkatchallaiah, Justice K. Jayachandra Reddy and Justice S.C. Agarwal.

In a separate dissenting judgment Justice L.M. Sharma and Justice J.S. Verma held the entire anti-defection law unconstiutional. The Judges held that the law violated the basic structure of the Constitution. They said constitutional scheme for decision on questions of disqualification contemplated adjudication by an independent authority outside the House. Namely, the President or the Governor in accordance with the opinion of the Election Commission all of whom were high constitutional authorities with security of tenure independent of the will of the House.

Suggestions of the Speakers

The Speakers Conference held in New Delhi on February 11, 1992, specially convened to consider the possible changes in the Anti-defection Act, 1985, unanimously agreed that the decision of the Speaker or Chairman, as the case may be, in all matters of disqualification of a member or members of a House on the ground of defection should be outside the jurisdiction of the Courts as provided in Para 7 of the Tenth Schedule of the Constitution. The Presiding Officers felt that Para 7 which was recently struck down by the Supreme Court should be restored and the law should be ratified by the required number of State Legislatures under Article 368 (2) of the Constitution.

The Speakers also generally agreed that the Supreme Court verdict on the legal validity of the Anti-defection Act, 1985, should be respected. But at the same time, they felt that the proceedings in the matter relating to determination of disqualification of a Member of Parliament or a Member of the State Legislature should be treated as proceedings of the Legislature concerned, as provided in Para 6 of the Tenth Schedule, and should, therefore, bar the Jurisdiction of the Courts within the meanings of Articles 122 and 214 of the Constitution respectively. They felt that it was a matter of "mutual respect" for the Legislature and the Judiciary and each one organ of the State should refrain from intervening in the matters of the other.

There was also unanimity among the Speakers on the need for curbing the defections as such. Some of the participants suggested that "wholesale defections" should be outlawed and, for that matter, they felt, that the condition of one-third split in the party should be modified. For genuine split in a party at least half of its members, it was suggested, should part company with the parent party. It was also suggested that the defectors should not be eligible to hold any office, including the ministership, for some time so that a Member was not lured to another party on some consideration.

There was also unanimity amongst the Speakers on the need for providing a permanent machinery for review of the orders of the Speaker disqualifying a Member from the House, to meet the ends of natural justice. There was, however, difference of opinion on the form of such a machinery. It was also felt that the determination of the issue whether a Member had incurred disqualification should not be done by a Speaker alone, but it should be referred to a committee of the House.

It was proposed that the recommendations of the Conference would first be discussed with the leaders of the various political parties in Parliament and State Legislatures, and then be forwarded to the Government for amendments in the Anti-defection Act, 1985. It is a lengthy process and how long does it take to effect the desired amendments swings in politics which is highly unpredictable in the present context.

Parties Favour Amendment

A meeting of major political Parliamentary parties, convened by the Speaker of the House of the People (Lok Sabha) on February 5, 1992 recommended amendment of the Anti-Defection Act to avert any confrontation between the Leg-

islature and the Judiciary on its implementation. The Lok Sabha Secretariat Press note said, "The consensus at the meeting was, that with a view to maintaining healthy and harmonious relations between the legislature and the judiciary, it was necessary that the decision of the Supreme Court should be respected by the presiding officers of all the legislative bodies in the country". The Government may prepare a draft of amendment to the existing law, the Press note said, and added that it could be referred to the Joint Select Committee of Parliament for discussion.

The meeting also felt the matter could be discussed in other form, like the Presiding Officers' Conference and various Political Parties.

Presiding Officers' Conference

Presiding Officers of Legislatures, on February 11, 1992, called for the creation of an authority, to review their decisions under the Anti-Defection Law. This was one of the major amendments to the Anti-Defection Law recommended by the Presiding Officers of "almost all the State Legislatures" at a conference chaired by the Speaker of the House of the People (Lok Sabha), Shivraj Patil.

According to the Press release issued by the Lok Sabha Secretariat, the Presiding Officers suggested the creation of the authority on the grounds that they should not be "answerable in the court of law for what they do while conducting the business of the House". It was proposed that such an authority could be the Governor or the President or a body of Speakers or a body of other persons.

They also pointed out that some of the terms used in the Anti-Defection Law such as "split", "merger", and "political parties" were ambiguous and needed to be clearly defined. Another amendment suggested was that the law should be "very clear on the activities of the political parties inside and outside the House, on expulsion and on the term 'unattached' used in the decisions of the presiding officers."

The Presiding Officers also suggested that members changing their parties "may not be given political positions." Besides, there was a debate on the provision of one-third of the members of a Party being allowed to defect without attracting disqualification under the Tenth Schedule.

Though extraneous to the Presiding Officers' Conference, it shall be worthwhile to refer to the opinion of the veteran BJP leader Atal Behari Vajpayee. On March 12, 1992, addressing a Press Conference at Lucknow, he demanded to review the Anti-Defection Act. He argued that the provision in the Act on split in political parties needs to be waived off completely as it was being misused. He suggested that any member of State Legislature or Parliament quitting the Party on whose ticket he had won the election would be forced to resign from his seat in the Legislative concerned and seek a fresh mandate.

SUGGESTED READINGS

Kothari, R, *Politics in India.*

Kochanak, S.A., *The Congress Party.*

Weiner Myron, *Party-building in a Nation.*

CHAPTER IXX

The Indian Political Tradition

India's relatively stable democracy and slow but steady economic development during the last five decades of independence appear exceptional to many observers. The existence and survival of the Indian democratic state and its capacity to oversee a reasonably sustained economic growth can be explained partly in terms of "the legacies of statelessness and state formation that distinguish India from most Third World countries. Their proximate determinant was the viceregal state of the British Raj. Their more distant determinants included the Mughal empire from whose ideas and practice the British benefited and which the British assimilated, and the imperial states and regional kingdoms of ancient and medieval India."[1]

The troubled political history of many Asian and African countries, during the last several decades, has shown that the task of state building must precede parallel nation building and economic development. "Contrary to prevailing assumptions of scho-larship and policy in the generation since decolonization, states create nations and economies more than nations and economies create states."[2]

The Sub-continental Empire

India's political tradition of stateness is rooted in its ancient and medieval history. Unlike some emergent states in Africa, it was not imported from Europe. In ideological and constitutional terms, it was not a foreign transplant though British rule in some ways did influence state formation and the level and quality of stateness in India. But British rule in turn was built on Mughal rule and incorporated many of its characteristics. The historical legacies of the sub-continental empires more than two millennia ago had established conceptions and institutions of the state that provided models for the contemporary multinational state of the Indian Republic. Regional kingdoms, however, constituted the principal state from the seventh to the sixteenth century. But the sub-continental state conception had already been realized in the Mauryan empire, particularly under Asoka (312-185 B.C.), and under the imperial rule of the Guptas (A.D. 319-540).

India's ancient empires had established their hegemony in the entire sub-continent over diverse regional kingdoms, thus, creating the structures and conceptions of a pan-Indian state. The concept of a *Chakravarti* ruler remained a part of India's political history sometimes as a reality and sometimes as an ideal to be pursued by powerful conquerers. Indian political tradition reflects a dialectical tension bet- ween these ever present regional political identities and the perennial quest for an imperial state. "The history of Indian state formation is more comparable to that of Russia and China, where empires became multinational states, than to that of Western Europe, where regional kingdoms were transformed into absolute monarchies and then nation-states."[3] Had the Holy Roman Empire embodied itself in a modern European polity, it could have resembled the modern Indian Republic. In fact, the regional kingdoms have remained in dialectical relation with the sub-continental empire thoughout Indian history. Today the dialectical relationship manifests itself through a federal form of government in the Indian Republic.

On the Indian sub-continent, the regional kingdom and the 'national' polity became the 'recessive' but the 'multinational' empire the 'dominant' form of the state. The Mughal, British and Indian states of the modern age incorporate the dialectical tension between these two alternating state forms in India's political tradition. India's sub-continental empires created means of penetration and domination which can be compared to those developed by European

1. Rudolph & Rudolph, *In Pursuit of Lakshmi : The Political Economy of the Indian State*, p. 60.
2. *Ibid.*, p.60.
3. *Ibid.*, p.64.

absolutism in the seventeenth and eighteenth centuries. these were: centralized fiscal instruments in the possession of the king; patrimonial agrarian bureaucracies barred from control of the means of adminis-tration and also from inheriting their office and estates; and armies financed and controlled by the king and not by feudal chiefs or independent military adventurers. Such arrangements were already in force in the fourth-century B.C. Mauryan imperial state and discussed in Kautilya's Arthashastra [4]

However, their realization has differed over time. Reinforced in later imperial states, they have weakened under enfeebled emperors or under regional satraps, whose officials seize control over estates, office, army and treasury through manipulation or use of force. The Mughals succeeded in constructing a centralized military-revenue arrangement, the *mansabdari,* which enabled it to extract the resources and maintain the army to conquer and govern an extensive empire. "Comparable in size to the domains of Charler V, the Mughal empire probably controlled its area more severely. The emperor's dominion was exercised through a centrally appointed court nobility, the *mansabdars,* not through decentralized prebendiaries as in European feudalism,"[5] Noble estates were not hereditary. The Mughals were influenced by Ottoman models of administration and revenue collection, though the Ottoman were more ruthless in eliminating intermediary classes than the Mughals. The local rulers and chiefs survived in India, forming intermediary layers of political, economic, and cultural autonomy. This contrasts with the model of 'oriental despotism' expressed in the Ottoman empire as well as with Russian Trarist absolutism.

The administrative-revenue system of the Mughal rulers provided the network, units and methods of revenue collection and the conceptions of maintaining social peace. the division of the country into *subahs, sarkars,* and *parganas* was perpetuated in British administrative divisions. The *zebt* method of measuring land for fixing revenue travelled from the administrations of Sher Shah and Akbar to Cornwallis and the British rule. In the latter period of Aurangzeb's rule and under the last Mughal rulers, the authority and capacity of the state appreciably declined. It was restored under British viceroys, who revived and reformulated the notions and practices of the imprial state bequeathed from the Mauryan times.

Imperial states created the myths, rhetoric and symbols of the king's eminence and the state's glory. Both the Mughals and the British benefited from the age-old and pervasive Hindu concept of a universal emperor, the *Chakravarti rajadhiraja,* who performed the *Ashwamedha* sacrifice. Akbar became a *shahanshah* (king of kings) and Queen Victoria assumed the gran title of Empress to legitimize their authority ever the Indian elites and masses. Such iconography, rituals and sanctification elevated the ruler to a god-like status, who became an object of awe, wonder and celebration. "Here too there was continuity between British and Mughal empires. The British used Mughal ceremonies and language to revitalize the universalism and mystique of the imperial state. Through ceremonial enactments that closely emulated Mughal patterns, they revived in Queen Victoria's time imperial grandeur and patrimonial ties in *durbars,* jubilees, and coronation ceremonies and rituals of loyalty between the Queen-Empress and her subjects."[6]

The realization of the sub-continental state has waxed and waned in history. The Mughals and the British in their own different ways revived and restored the structures of the subcontinental imperial state after defeating their regional challengers. The creation of India and Pakistan in 1947 and Bangladesh in 1971 left the sub-continent with one sub-continental imperial state and two latter-day representatives of the regional kingdom in a dialectical tension between them. In contrast with modern European states, which destroyed or absorbed regional identities, the Indian state has tried to accommodate regional cultures and identities through federal arrangements.

The strategy propounded in the fourth century Arthashastra—that subordinate rulers shall he preserved and respected in their customs and territorial jurisdiction, via tribute and respect, the superior authority of a king of kings—

4. See A.L. Basham, The Wonder that was India, Chap. 4, and Romila Thapar, Asoka and the Decline of the Mauryas.
5. Rudolph & Rudolph, *In Pursuit of Lakshmi : The Political Economy of the Indian State,* p. 65.
6. *Ibid.,* p. 66.

governed the statecraft of the sub-continental empires in Mauryan, Mughal and British times. After independence, India's federal system became its modern embodiment within the twentieth-century model of the sub-continental state.

Society, State and Individual

The state-society relationship, as Rudolphs put it, can be measured on a continuum ranging from complete state domination of society to complete societal dominance over the state. They identify four potential positions on the continuum; (1) totalitarian, in which the state totally dominates society, creating and controlling social institutions, maintaining a closed social order, and using force and terror to secure compliance; (2) autonomous, in which the state can be independent because of its insulation from social forces, the only limits on its actions being consent and legitimacy; (3) constrained, in which the state's freedom to act is limited by the representation of organised social interests; and (4) reflexive in which the state lacks self-determination because organised social classes have seized state authority and its resources. A particular state's location on the continuum would depend "on historical circumstances, including ideology, leadership, conjunctural effects, and the balance of public and private power.[7]

The Indian state is the residual legatee of a long tradition of high stateness that goes back to ancient imperial states and medieval regional polities. More recently, this high stateness, expressed in terms like *sarkar* (government) and *raj* (rule) is derived from more recent Mughal and British empires. After independence, the Indian Republic can be located in the middle positions of the continuum, autonomous or constrained, rather than at its extremes, totalitarian or reflexive. The state as a third actor began its career in independent India as a creature of Nehruvian 'socialism', which was independent of the class politics of both private capital and organised labour. "For Nehru, socialism meant using the planned development of an industrial society to eliminate poverty, provide social justice, create a self-reliant economy, and assure national independence and security in world politics. In a mixed economy, the state would occupy the commanding heights."[8]

Apart from Nehruvian consensus on the mixed economy, traditional Hindu and imported liberal state theory have also made termendons impact on state formation and the level and quality of stateness. Hindu theory emphasizes family, caste, clan, and tribe. Liberal theory regards the individual as the basic unit of society. Liberal theory also stresses the contractual basis of obedience and authority. Hindu theory is related to *danda niti* (science of punishment) and *Arthashastra's* real politik. It differs sharply with liberal conception of right reason and natural law as the source of order and morality. Yet the two theoretical traditions converge with respect to the priority of social values over state goals. The *Dharmashastras* constitute fundamental prescriptive canons of Hindu culture in a society where the ruler and the ruled are equally bound by them. The doctrine implied restraints on the king's power inherent in the *danda niti* as liberal doctrines of consent and natural rights did in relation to the western state. The good Hindu king was required to protect the laws of the self-regulating orders of society.

At the extreme, both liberal and Hindu state theory reach the point of anarchism. This is suggested by the convergence of Thoreau and Gandhi on the philosophy, legitimacy and importance of civil disobedience to resist the state that violates social values and ethical norms of good and just governance. The founders of the Republican constitution benefited from the legacy of high stateness bequeathed to them by the political tradition of the Mauryan, Mughal and British sub-continental state. But they were obliged to combine the principles of centralization with a parallel system of regional autonomy, derived from the political tradition of self-administering regional kingdoms.

Rudolphs conclude this dialectical interpretation of the Indian state by saying: "The ideas and practice of the sub-continental imperial state from Mauryan to British times and the Hindu conception that social order requires the state's force, left a legacy of high stateness. On the other hand, the sovereignty-limiting ideas and practice of the regional kingdom and of the Hindu and liberal conceptions that society is prior to and autonomous of the state created a legacy of low stateness. These paradigms and

7. *Ibid.*, p. 61.
8. Rudolph & Rudolph, *In Pursuit of Lakshmi : The Political Economy of the Indian State*, p.62.

parameters structured the possibilities and choices of those who created independent India's state."[9] The nature of the state cannot be determined *a priori* from theory. State-society relationships vary with historical circumstances and the process of state formation produces polymorphous entities. Peter Nettl, therefore, argued that high and low stateness varied with historical experience, political, cultural and structural legacies.[10]

Obstacles to Democracy

By the time of Queen Elizabeth I in England, the Mughal conquerers of India had established in India what Karl Wittfogel called an oriental despotism. Barrington Moore prefers to call it "an agrarian bureaucracy or an Asian version of royal absolutism, rather more primitive than that of China, a political system unfavourable to political democracy and the growth of a trading class. Neither aristocratic nor bourgeois privileges and liberties were able to threaten Moghul rule. Nor were there among the peasants any forces at work that would have been likely to produce either an economic or a political break with the prevailing society."[11] Village community and caste system prevented peasant discontent from taking the form of massive rebellion as in the case of China.

When the Mughal system simply broke down due to lack of qualitative change and the dynamics of increasing exploitation produced by its system of tax-farming, the collapse gave the European bourgeoisie the chance to establish its colonial foothold in the eighteenth century. There were then powerful obstacles to modernization and democracy in India's social structure prior to the British conquest. The British rule damaged the artisan castes and promoted the rise of a parasitic landlord class. The colonial regime, the foreign bourgeoisie and the native landlords extracted a substantial economic surplus from the impoverished peasantry. The British presence, the failure of 1857 rebellion, and the character of Indian society ruled out the Japanese path to moder-nity and industrial development. Hence, economic stagnation continued thoughout the British era and indeed into the present day.

However, the British rule prevented the formation of the reactionary coalition of landowning elites with a weak bourgeois class and thereby, along with British cultural influence, made a small contribution to political democracy and bourgeois parliamentarism. The Indian manufacturers felt cramped by imperialist policies and allied with the nationalist movement. "As the nationalist movement grew .... Gandhi provided a link between powerful sections of the bourgeoisie and the peasantry through the doctrines of non-violence, trusteeship and glorification of the Indian village community. For this and other reasons, the nationalist movement did not take a revolutionary form ... The outcome of these forces was indeed political democracy, but a democracy that has not done a great deal toward modernizing India's social structure. Hence, farming still lurks in the background."[12]

According to Moreland, the fundamental features of the traditional Indian polity were a sovereign who ruled, an army that supported the throne, and a peasantry that paid for both. To this trio one should add the institution of caste for a better understanding of Indian society. The weakness of a national aristocracy was an important obstacle in the growth of parliamentary democracy from native soil. Land was held in theory and to a great extent in practice at the pleasure of the ruler. Again there was no such thing as the inheritance of office and so each generation had to make a fresh start.

By skimming off most of the economic surplus generated by the peasants, the Mughal rulers avoided the dangers of an aristocratic attack on their power. At the same time, wasteful use of surplus seriously limited the possibilities of the kind of development that could have broken through the agrarian order and established a new kind of society. "The point deserves stressing since Marxists and Indian nationalists generally argue that Indian society was on the point of bursting through the fetters of an agrarian system when the advent of British imperialism crushed and distorted potential developments in this direction. This conclusion seems quite unwarranted on the basis of the evidence, which gives strong support to the opposite thesis : that neither capitalism nor

9. *Ibid.* p. 68.,
10. J.P. Nettl, "The State as Conceptual Variable, *World Politics* 20 (July 1968), p. 566.)
11. Barrington Moore Jr., *Social Origin of Dictatorship and Democracy.* p. 315.
12. Barrington Moore Jr., *Social Origin of Dictatorship and Democracy*, p. 316.

parliamentary democracy could have emerged unaided from seventeenth century Indian society."[13]

Cities like Agra, Lahore, Delhi and Vijayanagar rivalled the splendour of Rome, Paris and Constantinople but they were not centres of trade and commerce. Despite the Protestant ethic of the Baniyas, there was no vibrant middle class in Indian cities. The French traveller Bernier says, "There is no middle estate. A man must be either of the hihest rank or live miserably."[14] The Mughal legal system was behind that of Europe and no merchant could seek the protection of his rights from the court with the help of a lawyer as this profession was non-existent. The Mughal system was too predatory in relation to merchants as well as other property- owners. Yet chieftains and *zamindars* were left alone as long as they paid their taxes.

These local despots were too parochial and disunited to challenge and substitute for royal absolutism as the English aristocracy did from the days of Magna Carta. But they played a political role when the imperial system decayed and became more oppressive by becoming the rallying point for peasant rebellions. "Native elites together with the peasants could not wield India into a viable political unit on their own. But they could punish the errors of foreigners and make their position untenable. This the peasants did under the Moghuls, and with new allies, under the British; similar tendencies remain apparent even in the third quarter of the twentieth century."[15]

By the middle of the eighteenth century the Mughal bureaucratic hegemony had decayed into a system of petty kingdoms frequent at war with one another. This opened way for imperialist intervention and subsequent conquest of India. "As one looks back over the record, it is easy to conclude ... that the dynamics of the Moghul system were unfavourable to the development of political democracy or economic growth in anything resembling the Western pattern. There was no landed aristocracy that had succeeded in achieving independence and privilege against the monarch while retaining political unity. Instead their independence, if it can be called that, had brought anarchy in its train. What there was of a bourgeoisie likewise lacked an independent base. Both features are connected with a predatory bureaucracy, driven to become ever more grasping as its power weakened, and which by crushing the peasants and driving them into rebellion returned the subcontinent to what it had often been before, a series of fragmented units fighting with one another, ready prey for another foreign conquerer."[16]

The character of upper classes and political institutions prevented India's progress towards capitalism and political democracy. Besides, a closer look at the place of the peasants in India's social structure will account for their poor productivity and apparent political docility. The structural contrast with China is quite striking. In India, the higher castes had the best land and could command the labour of the lower castes. As an organization of labour, caste in the countryside was a cause of poor cultivation. As the organization of authority in the local community, caste inhibited political unity. The system emphasized the individual's duty to the caste, not individual rights against society. "In the willing acceptance of personal degradation, by its victims and the absence of a specific target for hostility, a specific locus of responsibility for misery, the Indian caste system strikes a modern Westerner as a curiously intensified caricature of the world as Kafka saw it."[17]

Imperialism and India's Underdevelopment

India's political tradition was abruptly unsettled and ruptured by imperialist intervention in the eighteenth century which started the process of India's underdevelopment. When this intervention began, India was predominantly a feudalistic society. Of course, there are far-reaching differences between the European serfdom and pre-capitalist social structures of Japan, China and India but they had this similarity that the ruling class extracted an economic surplus from the peasants, though by different methods. So one should bear in mind that histories of feudalism, despite divergences, contain substantial similarities. Though many historians still object to the general applicability of the term

13. *Ibid.*, p. 321.
14. Quoted in W.H. Moreland, *India at Death of Akbar.*, p.26.
15. Barrington Moore Jr., *Social Origin of Dictatorship and Democracy*, p. 326.
16. Barrington Moore *Jr., Social Origin of Dictatorship and Democracy* pp. 329-30.
17. *Ibid.*, pp. 340-41.

'feudalism', there is a wide consensus on the proposition: "that the pre-capitalist order, be it in Europe or be it in Asia, had entered at a certain state of its development a period of disintegration and decay. In different countries this decomposition was more or less violent, the period of decline was shorter or longer — the general *direction* of the movement was everywhere the same."[18]

There were three interrelated processes in this change. First, there was a notable increase in agricultural output accompanied by growing feudal pressure on the peasants, leading to their discontent and revolt and the creation of a potential industrial labour-force. Secondly, there was increased division of labour, evolution of the class of merchants and artisans and the growth of towns. Thirdly, there was visible accumulation of capital in the hands of the expanding class of traders and rich farmers. In the words of Marx, "what enables money wealth to become capital is on one hand its meeting with free workers; is secondly its meeting with equally free and available for sale means of subsistence, materials, etc. that were otherwise... the property of the now dispossessed masses."[19] However, it is the primary accumulation of capital to which strategic significance should be given. To quote Marx again, "Capital formation does not stem ... from landed property ... nor from the guild ... but from merchant and usurer wealth."[20]

The state, as it came under the influence of capitalist interests, became increasingly active in aiding and advancing the emerging entrepreneurs. Marx said, "they all employ the power of the state, the concentrated and organisd force of society, to hasten, hothouse fashion, the transformation of the feudal mode of production into the capitalist mode, and to shorten the transition."[21] Western Europe's large leap forward need not necessarily have prevented economic growth in other countries like India. As Andre Gunder Frank testifies, development in Western countries was accompanied by simultaneous process of underdevelopment in colonies and semi-colonies. At the time of Western interaction, "the primary accumulation of capital was making rapid progress, crafts and manufacturing expanded, and mounting revolts of the peasantry combined with increasing pressure from the rising bourgeoisic shook the foundations of the pre-capitalist order. This can be seen whether we consider the early history of capitalism in Russia ... or whether we retrace the beginning of capitalism in India..."[22] Marx said, "The country that is more developed industrially only shows to the less developed the image of its own future."[23]

In colonies like India, the colonizers "rapidly determined to extract the largest possible gains from the host countries, and to take their loot home ... they engaged in outright plunder or in plunder thinly veiled as trade, seizing and removing tremendous wealth from the places of their penetrations,"[24] In the words of Maurice Dobb: "In the cruel capacity of its exploitation colonial policy in the seventeenth and eighteenth centuries differed little from the methods by which in earlier censuries crusaders and the armed merchants of Italian cities had robbed the Byzantine territories of the Levant,"[25] Marx points out, "the treasures captured outside Europe by undisguised looting, enslavement and murder flowed back to the mother country and transformed themselves into capital."[26] These 'unilateral transfers' of wealth multiplied economic surpluses available to Western capitalism for its growth and damaged the capacity of colonies like India to develop by robbing them of these aggregates of wealth and capital.

The record of India's exploitation from the days of the East India Company has been summarized by a British economic historian, an authority not suspect of anti-British, prejudice as follows; "Up to the eighteenth century, the economic condition of India was relatively advanced, and Indian methods of production and

18. Paul Baran, *The Political Economy of Growth*, p. 268.
19. Quoted in *Ibid.*, p. 269.
20. Quoted in *Ibid.*, p. 270.
21. Karl Marx, *Capital* (ed. Kerr), Vol.1. p. 823.
22. Paul Baran, *Political Economy of Growth* , p. 272.
23. Karl Marx, *Capital* (ed. Kerr), Vol. 1., p. 13.
24. Maurice Dobb, *Studies in the Development of Capitalism*, p. 208.
25. *Ibid.*, p. 209.
26. Karl Marx, *Capital*, (ed-Kerr), Vol. 1 p. 826.

of industrial and commercial organisation could stand comparison with those in vogue in any other part of the world ... A country which has manufactured and exported the finest muslins and other luxurious fabrics and articles when the ancestors of the British were living an extremely primitive life, has failed to take part in the economic resolution initiated by the descendant of those same wild barbarians."[27]

This failure was not due to some peculiar inaptitude of the Indian race because "the great mass of the Indian people possess a great industrial energy, is well-filled to accumulate capital, and remarkable for a mathematical clearness of head, and talent for figures and exact sciences. Their intellects are excellent."[28]

Brooks Adams compares India's plunder by the British with the worst examples of such loot in history : The Roman proconsuls who squeezed out of a province the means of building marble palaces and obtain other luxuries just in a year and the Spanish Viceroys of Peru or Mexico who after plundering and killing the natives of Latin America, entered Madrid with a long train of gilded coaches and of sumpter-horses trapped and shod with silver. The British had outdone all of them.[29] "Very soon after Plassey the Bengal plunder began to arrive in London, and the effect appears to have been instantaneous, for all authorities agree that the industrial revolution," the event which has divided the nineteenth century from all antecedent time began with the year 1760."[30]

Romesh Dutt concludes by saying : "In India, the state virtually interferes with the accumulation of wealth from the soil, intercepts the incomes and gains of the tillers ... leaving the cultivators permanently poor ... In India, the state has fostered no new industries and revived no old industries for the people ... In one shape or another all that could be raised in India by an excessive taxation flowed to Europe, after paying for a starved administration ... Verily the moisture of India blesses and fertilizes other lands."[31]

The calamity that the invasion of British capitalism brought upon India assumed staggering proportions. It is true that the process of transition from feudalism to capitalism has caused a vast amount of misery, suffering and starvation everywhere. Yet accumulation of capital ultimately served to lay the foundations for the eventual expansion of industrial output and productivity. Paul Baran points out: "Indeed, there can be no doubt that had the amount of economic surplus that Britain has torn from India been *invested in India,* India's economic development to date would have borne little similarity to the actual sombre record. It is idle to speculate whether India by now would have reached a level of economic advancement commensurate with its fabulous natural resources and with the potentialities of its people. In any case, the fate of the successive Indian generations would not have resembled even remotely the chronic catastrophe of the last two centuries."[32]

But the harm done to India's economic capacity was exceeded by the lasting damage inflicted upon the people as Marx put it: "All the civil wars, invasions, revolutions, conquests, famines strangely complex, rapid and destructive as the successive action in Hindustan may appear, did not go deeper than its surface. England has broken down the entire framework of Indian society, without any symptoms of reconsolidation yet appearing. This loss of the old world, with no gain of a new one, imparts a particular kind of melancholy to the present misery of the Hindu and separates Hindustan, ruled by Britain, from all its ancient traditions, and from the whole of its past history."[33]

The British administration of India systematically destroyed all the fibres and foundations of Indian society. Its land and taxation policy ruined the rural economy and created a class of parasitic landlord and moneylender. Its commercial policy destroyed the artisan class and created the filthy slums of Indian cities filled with millions of hungry and sick paupers. Its economic policy prevented indigenous industrialisation and promoted the proliferation of speculators, petty businessmen, agents and

27. Vera Anstey, *The Economic Development of India* (4th edition), p.5.
28. Quoted in Marx, "*The Future Results of British Rule in India* in Marx and Engels, *On Britain*, p. 398.
29. See T.B, Macaulay's *Lord Clive.*
30. *The Law of Civilisation and Decay, An Essay on History*, pp. 294 ff.
31. R.C. Dutt, *Economic History of India,* (7th edition), pp. viii-xi
32. Paul Baran, *The Political Economy of Growth*, pp. 281-282.
33. Karl Marx, "British Rule in India," in Marx and Engels, *Selected Works,* Vol 1, p.313.

sharks of all types preying upon the miserable people of a decaying society. To quote from Kaye's *Life of Metcalfe,* "It was our policy in those days to keep the natives of India in the profoundest state of barbarism and darkness, and every attempt to diffuse the light of knowledge among the people, either of our own or of the independent states, was vehemently opposed and resented,"[34]

Jawaharlal Nehru says: "British rule thus consolidated itself by creating new classes and vested interests who were tied up with that rule and whose privileges depended on its continuance. There were the landowners and the princes, and there were a large number of subordinate members of the services in various departments of the government ... To all these methods must be added the deliberate policy, pursued throughout the period of British rule, of creating divisions among Indians, of encouraging one group at the cost of the other,"[35] It is thus a fair assessment of the impact on India of two centuries of exploitation by Western imperialism and a correct analysis of the causes of India's continued underdevelopment, when Nehru further says: "Nearly all our major problems today have grown up during British rule and as a direct result of British Policy; the princes; the minority problem; various vested interests, foreign and Indian; the lack of industry and the neglect of agriculture; the extreme backwardness in the social services; and above all the tragic poverty of the people."[36]

Independence and Partition

Despite serious obstacles, an independent Indian bourgeoisie, as distinguished from a compradore mercantile class, did not come into existence during the period of British rule. A few industrial houses like the Tatas and the Birlas even played a monopolistic role in India's industrial development. They extended moral and material help to the nationalist leaders in organising an anticolonial movement against the British rulers. Indian National Congress during the Gandhian era-1919-47 was financially supported by the Indian bourgeoisie. The Muslim League, from the beginning, was a movement supported by the Muslim landowners in the United Provinces but acquired some strength when the Muslim bourgeoisie from the Bombay Presidency extended its support to it. Similarly, the financial backing of the Marwari-Gujarati capital was crucial for the National Congress.

The Non-Co-operation Movement of 1920-21 was one of the landmarks in the Gandhian era. Others were the civil disobedience movement of 1930-31, the Individual *Satyagraha* of 1940 and Quit India Movement of 1942-45. Almost all of them combined legal and extra-legal methods of struggle. Gandhi and his followers questioned the moral right of the imperialists to rule over India and courted imprisonment by violating their unjust laws. But he also tried to negotiate with the British rulers and to reach agreement with them in a spirit of conciliation. This strategy of struggle followed by compromises suited the Indian bourgeoisie perfectly which was itself vacillating in its attitude towards imperialism.

A fundamental characteristic of the movements led by Gandhi was its emphasis on non-violence. Even those disciples of Gandhi, who did not accept non-violence as a creed, accepted it as a practical and expedient policy. "Gandhi was a unique leader in many respects. He tried to fulfil many different functions. He was a social reformer, a nationalist leader and a world prophet. This created a lot of confusion among those who could only think within established framework. Some of them accused him of revivalism and others of reckless revolutionary activities. And many contended that he was strengthe-ning anarchy in the country."[37] An Indian Marxist noted about Gandhi: "The fact that India chose to remain a secular republic is in large measure to him. The Hindu communalist felt at an enormous disadvantage in combating him since it was impossible to contest the Indianness or the 'Hinduness' of the man of the man or to dispute that. What he was telling the people sprang from the very depths of the traditions of India."[38]

While the form of Gandhi's thought and expression was based on Hindu and religious idioms and terminology to some extent, the content of his message was secular, national

34. Quoted in Paul Baran, *The Political Economy of Growth,* p. 283.
35. Jawaharlal Nehru, *The Discovery of India,* pp. 304-05.
36. *Ibid* pp. 306-07.
37. K.P. Karunakaran, *Democracy in India,* p.12.
38. Mohit Sen, The *Indian Revolution,* p.20.

and universal. Within India, he was the greatest force in favour of democracy and modernisation. He fought for the people's right to civil liberties in the Non-co-operation and Khilafat movements. Later, he struggled for the economic rights of the poorest of the-poor the right to make salt. In 1940, he protested against the British decision to make India a belligerent without her consent in an imperialist war. By 1942, he demanded that the British should quit India. In 1947, he stood for the country's unity and independence but without partition as this, he thought and feared, could lead to a communal holocaust and ethnic cleansing in both the countries. When the partition became inevitable he fought the battle against communal killings and fanaticism almost single-handed. Ultimately, a Hindu zealot shot him because of his convictions. Gandhi's incompromising nationalism, humanism and secularism became inseparable ideological components of Indian political tradition.

In a way, Gandhi and his philosophy of 'non-violence' can be interpreted as representing the ideology of the Indian bourgeoisie. This class did not want a violent anti-imperialist revolution with the support of the peasants and workers as this could lead to their own overthrow eventually. When the Congress leadership led by Patel and Nehru accepted the Mountbatten plan of India's partition into two independent dominions in 1947, it was fulfilment of the aspirations of the Indian bourgeoisie as well as the ambitions of M.A. Jinnah and the Muslim bourgeoisie represented in the Muslim League.

D.G. Tendulkar, the authoritative biographer of Gandhi, records the events of 15 August, 1947 as follows: "There were festivities all over the land. But the man who, more than any one else had been responsible for freeing India from the alien rule did not participate in the rejoicings. When an officer of the Information and Broadcasting Department of the Government of India came for a message, Gandhi replied that he had 'run dry.' When told again that if he did not give any message it would nor be good, Gandhi replied : "There is no message at all; if it is bad, let it be so." (Vol. VIII, pp. 95-96).

It may also be noted that on 26 January, 1948, the first time Independence Day was being celebrated in free India and just four days before his martyrdom — Gandhi said: "This day, 26th January, is Independence Day. This observance was quite appropriate when we were fighting for independence we had not seen, nor handled. Now? We have handled it and we seem to be disillusioned. At least I am, even if you are not." (Vol. VIII, p. 338). Disillusioned by the moral degradation of the ruling Congress Party, he even recommended its dissolution, withdrawal from politics and conversion into a Lok Sevak Sangh, *i.e.,* a non-governmental organisation for social service. He said that the Congress as a propaganda vehicle and parliamentary machine had outlived its utility.

Commenting upon the gulf between Gandhi on the one hand and Nehru and Patel on the other which was evident between 1945 and 1948: E.M.S. Namboodiripad pointed out: "It was this change in the position of the bourgeoisie as a class and its individual representatives that brought it into conflict with Gandhi, the man who still clung to the ideals which he had been preaching in the days of anti-imperialist struggle. The moral values which he had preached in the days of anti imperialist struggle now became a hindrance to the politicians who came to power. Gandhi, on the other hand, remained true to them and could not reconcile himself to the sudden change which occurred to his former colleagues and lieutenants .... We may conclude by saying that Gandhi became the Father-of-the-Nation, precisely because his idealism to which he adhered to in the years of anti-imperialist struggle became practically useful political weapon in the hands of the bourgeoisie in the latter days of his life, because his idealism did in the post-independence years become a hindrance to the self interest of the bourgeoisie."[39]

Nehru was another important leader and thinker who contributed to the growth of India's political tradition both before and after independence. Gandhi had nominated him as his political heir despite differences in their political outlook and philosophy on some issues. Nehru was firm believer in the ideals and institutions of bourgeois democracy and liberalism. The non-communal approach to politics was interpreted by Nehru in Western secular terms. In his *Autobiography* and *Whither India,* he expressed some intellectual appreciation of the

39. E.M.S. Nambordiripad, *The Mahatma and the Ism*, p. 117.

Marxist tradition, 'socialism' and Soviet Russia but kept away from the politics of both the Congress Socialist Party and the Communist Party of India as well as the working-class movement. This made him an acceptable leader of the Indian bourgeoisie both during the anti-colonial struggle and after the formation of the Indian Republic. He also kept away from Subhash Bose's radicalism and pragmatism.

During the World War II, he remained sympathetic to the cause of the Democracies against the Fascist aggressors and supported the Soviet Union against Nazi Germany and the Republic of China against Japan. He opposed Bose's plan for seeking India's liberation with the Japanese support. "Nehru's greatest contribution lay in giving a definite international outlook to the Indian nationalist movement— He conceived the Indian nationalist movement as a part of the world-wide movement against imperialism. In fascism, he perceived the dangers to individual freedom and he was of the view that, under no circumstances, should Indian nationalism ally with fascism even if the fascist governments were fighting the Western imperial powers like Great Britain and France."[40] Thus, the political tradition of India's National Movement was not only liberal and democratic in a general sense, it was also at the same time anti-fascist in a specific sense which in a way was the extension of its deep-rooted anti-imperialism.

Modern India, however, also saw a strong Muslim separatist movement, which culminated in the creation of a separate Muslim state , under the leadership of Mohammed Ali Jinnah. But the ideology of Muslim separatism began with Sir Syed Ahmed. Unfortunately, the Muslim political tradition in India was characterized by the almost total failure of the Muslim intelligentsia to separate religion and politics and to achieve a secular outlook as well as their unwillingness to adapt themselves to the demands of reason, liberalism, modernisation and secularism. Khilafat Movement, which was supported by Gandhi, was a means to achieve the goal of Pan-Islamism, an ideal rejected by nationalist Turkey. The movement had no intrest in democracy and no commitment to India's composite nationalism. It is a sad reality that those who followed the technique and strategy of this Pan-Islamic movement fought the battle of Pakistan and won it.

Iqbal, the celebrated poet who wrote *Sare Jahan se achcha Hindostan hamara* (our India is the best in the world), also become the prophet of Muslim separatist ideology. Moin Shakir says, "Iqbal did not have sufficient courage to break with traditional Islam completely and accept the spirit of modern science. His thought is replete with paradoxes and antiquarianism. He failed to assimilate liberal forces and could not completely free himself from the moorings of tradition. His inconsistences and contradictions make it difficult to regard him as a systematic thinker or a consistent philosopher.[41]

W.C.Smith says, "Iqbal was himself a bourgeois and in some respects a contented one, he never really deserted his class."[42]

Abul Kalam Azad and Abdul Ghaffar Khan were two Muslim leaders of stature who understood the true nature of composite Indian nationalism, democracy, freedom, parliamentarism and secularism. While Azad was also a great thinker, Gaffar Khan was a great leader of the Pathans who converted them to the Congress ideology of auti-imperialism and non-violent struggle. Professor Mohammad Habib says this about Maulana Azad , "His thought was correct; and his faith in God, in his country and in himself was so firm that he would neither bend nor break owning to the onslaught of the mad-dogs of Muslim communalism. In those days the Muslim Unveresity had become 'the armoury of the Muslim League" and I have good personal experience of that mad-dog Muslim communalism, which has fortunately be taken itself to Pakistan, where it is controlled by military regiments. "In the whole history of Muslim India," no one thinker and scholar has been more intensely hated by his coreligionists than Maulana Azad during the ten years preceding the Partition. Jinnah took every opportunity of insulting him; the Muslim press kept on cursing him, he was abused from every communal platform"[43].

The real ideologue of the separatist Muslim

40. P. Karunakaran, *Democracy in India*, p.16.
41. Moin Shakir, *Khilafat to Partition*, p. 123.
42. W.C. Smith, *Modern Islam in India*, p.112.
43. M. Habib's "Introduction" To Moin Shakir's *Khilafat to Partition*, p. xx.

political tradition in India was none other than Mohammed Ali Jinnah. Though in the beginning, he started as a nationalist leader of the moderate Gokhale school. At that time he was the most secular of all Muslim leaders. He was least interested in Islam and had no knowledge of its scriptures. He accepted the principles of nationalism, democracy, secularism and unity of the country. As a liberal, he stood for the ideals of individual liberty, absence of fanaticism, and constitutionalism. He said that the people should learn to separate religion from politics. He was a great lawyer who defended Tilak in the court when the British were determined to persecute him for his militant nationalism. He was metamorphosed completely after a few decades into a Muslim communal bigot and an advocate of the two- nation theory which became the ideological basis of the Pakistani state.

The portrait of Jinnah would remain incomplete if we do not state the fact that as a politician he was remarkably callous. "When a group of Aligarh Muslim students ventured to ask him what would be the fate of Indian Muslims he said he would give his answer when the time came. But when the time came, he declared: 'I have written off the Mussalmans of India.'"[44] Jinnah personally and his Muslim Leage were never actively involved in any anticolonial struggle directed against the British rulers. The only stuggle he led just before partition was the socalled 'Direct Action ' directed against the Hindus in Bengal and Punjab. This resulted in large-scale ethnic cleansing of both Hindus and Muslims in North India but Jinnah did not shed a tear and had no plan or patience for peaceful transfer of the two communities across the newly created borders of India and Pakistan.

Jinnah argued that the Congress was a Hindu body, Swaraj meant Hindu Raj and National Government, by implication, would be Hindu Government. He gave an ideological and religious interpretation to the Two-Nation Theory. He argued that the Muslims in India are a nation who must preserve their culture and identity in a separate state of Pakistan. Democracy in united India would be the 'fascist' rule of the Congress-led Hindu majority. Jinnah described the Congress organization led by Gandhi as a "Fascist Grand Council under a dictator who was not even a four-anna member of the body."[45]

Democratic rule will lead, he said, to the complete destruction of what is most precious in Islam; it will culminate in the creation of private armies of both the communities and to civil war.

Thus the conception of Indian nationalism and a central, sub-continental government was a mental luxury of the Hindu leaders. Another ingredient of the Two- Nation Theory was the emphasis on the 'Historical' and 'Spiritual' differences existing between the Muslims and the Hindus. The history of one thousand years, said Jannah, failed to unite them into one nation. Therefore, "the artificial and unnatural methods of a democratic constitution will not create a sense of nationality." Jinnah held that Hinduism and Islam are "two entirely distinct and separate civilizations," the Hindus and Muslims, therefore, belonged to two antagonistic religions with different social customs, rival philosophies and two distinct bodies of literature, they did not inter-marry and did not inter-dine, and they belonged to two dissimilar societies, which were governed by two different social and legal codes. "They govern not only his law and culture but every aspect of the social life and such religions, essentially exclusive, completely preclude that merging of identity and unity of thought on which Western democracy is based and inevitably bring about vertical rather than the horizontal division democracy envisages."[46]

There is another aspect of the Muslims separatist political tradition. The leadership of the Muslim League was in the hands of the North Indian landowners and the Gujarati Bohra bourgeoisie. The Muslim landlords were apprehensive of losing their lauded property as the Congress was committed to a policy of radical land reform at that time. The Muslim bourgeois class was not happy about the competition which it had to face from a richer Hindu bourgeoisie. A separate homeland could provide a refuge and better opportunity for trade, industry and profits. Penderal Moon rightly says, "The truth

44. *Ilid,* p.xxi.
45. *Recent Speeches and Writings of Mr. Jannah,* p. 233, Quoted in ***Khilafat and Partition***, p.190.
46. Quoted in Moin Shakir, *Khilafat to Partition* , p. 191.

is that for the Muslim bourgeoisie the idea of a state, however poor, in which they and not the Hindus would be rich-men and hold all the best posts in government service, industry and commerce had a powerful attraction."[47]

According to Moin Shakir, "The Two-Nation Theory and the demand for Pakistan indicates the peculiar non-national trait of the Muslim mind. It was a self-defeating project and an escape from hard realities."[48] Dr. S. Ansari argues that a careful study of Indian Islam reveals that "Islam in India is an Arabic version of *Sanatana Dharma* just as Sikhism and Arya Samaj are more or less Gurmukhi or Hindu Editions of Islam.[49] Ansari also stated that the two-nation theory was a myth, a camouflage to cover up humiliation in the social sphere, and inequality in the economic field. "The story of the growth of the Muslim League is the story of the rise of the Muslim middle class. Moreover, the young bourgeoisie—both Muslims and Hindus — felt the need of having the state in its own hands. Therefore, Jinnah was more interested in the political liberation of the Muslims than in the social and economic emancipation of the exploited masses.[50] Pakistan was thus a new state of the Muslim Indian bourgeoisie.

In 1971, there was another partition of the Indian subntcontinent when Bangladesh came into existence, demolishing M.A. Jinnah's theory of separate nationalism on purely religious basis. It invalidated his theory of 'two nations' creating a Bengali state out of Pakistan, demonstrating the significance of Bengali sub-nationalism. In secular India, linguistic sub-nationalism was contained within a secular, federal and democratic political structure.

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50. *Ibid.,* p. 27.

CHAPTER XX

The Indian Political System

Early Years of the Republic

The Indian Republic, according to Paul Baran, during its early years, when it was being governed under the undisputed leadership of Jawaharlal Nehru, could be described as a nation-state with a 'New Deal' orientation. A New Deal type regime like that of independent India was brought to power by a broad popular movement. Its primary and unifying objective was to overthrow the colonial rule and replace it by a government of national independence. "Struggling against imperialism and its domestic ally, the feudal comprador coalition," the national movement assumed the charecter of a united front of "the progressive bourgeoisie striving to find a road towards industrial capitalism, of intellectuals seeking a better future for their country, and of active elements of the urban and rural proletariat rising against the misery and oppression of imperialist comprador domination." However, an essentially reactionary segment of the feudal aristocracy also "joined the nationalist camp, interested primarily in deflecting popular energies from the struggle for social change into a fight against foreign subjugation"[1].

Immediately after independence, the unity of the nationalist movement was subjected to severe strains and stresses. Earlier also, its right-wing was afraid that the national struggle might create conditions favourable to a social revolution by mobilising and organizing the peasants and workers. Therefore, it sought to exclude or minimize the role of the popular masses in the anti-imperialist front and adopted a policy of negotiations and compromises with the imperialist authorities. Its left-wing was anxious to combine the goals of social justice with those of national freedom and insisted on greater mass participation in anti-imperialist struggle. Yet so long as the primary goal of national freedom was not attained, "the fight for national independence over-shadowed and absorbed the struggle for social progress."[2]

Earlier the centripetal forces of the national united front were stronger than the centrifugal elements. This scenario began to change after the formation of the Indian Republic. Weakened by World War II, Great Britain was compelled to grant political independence to South Asian countries like Burma, India, Pakistan and Sri Lanka. As John Foster Dulles put it,"When the fighting in World War II drew to a close, the greatest single political issue was the colonial issue. If the West had attempted to perpetuate the *status quo* of colonialism it would have made violent revolution and consequent defeat inevitable. The only policy that might succeed was that of bringing independence peacefully"[3]

With the problem of national independence resolved, the basic class conflict of an antagonistic society became intensified in India. While some significant, central issues of social and economic development were actually linked with the questions of national freedom, there were some other issues actually which were being obscured and confused by it. For example, the oppression and exploitation of the peasantry by the landowning aristocracy or the strangulation of industrial development by monopolistic capital was merely a *national* question, it was more a *social* problem, to be faced and to be resolved in that way. Thus, the nationalist movement, after acquiring power in the Indian Republic, entered a process of disintegration. The socially antagonistic elements, tenuously integrated during the era of anti-imperialist struggle, became more or less quickly polarized into opposing class parties or fractions within the frame work of a new political order. The break-up between the Indian National Congress on

1. "Paul Baran, *Political Economy of Growth*, p. 366.
2. *Ibid.*, p. 36.
3. John Foster Dulles, *War and Peace*, p. 76.

parties on the other signified this schism in the early years of the Indian Republic.

The speed of this breakdown of national unity depended upon the accentuation of the internal class straggle in the context of the specific historical circumstances of a country. In China the advanced urban proletariat had played a decisive role in the anti-imperialist straggle and was strong enough to organise and assume the hegemony of the peasantry's armed struggle for an agrarian revolution. In this service, the split in the national front proceeded very rapidly. Its bourgeois, capitalist, component, frightened by the spectre of a social revolution. Turned swiftly against its former ally, and its mortal enemy of the future. In fact, it did not hesitate to make common cause with feudal elements representing the main hindrance to its own development, with the impesialist overlords just overthwon by the national liberation, and with the comprador groups threatened by the political retreat of their foreign protectors. They proved the correctness of Lord Acton's aphorism, that "the bonds of class are stronger than those of nationality."[4]

Under such conditions "the political independence barely won turns into a sham, the new ruling group merges with the old ruling group, and the amalgam of property—owning classes supported by imperialist interests uses its intire power to suppress the popular movement for genuine national and social liberation and reestablishes the *ancien regime* not *de jure but de facto.* China under the Kuomintang, Pakistan, South Korea, South Vietnam typify this process."[5] India under the Congress rule during the early years of the Republic did not succumb to this degeneration. This is because the popular pressure for social liberation was less pronounced in India at the time of the attainment of national freedom.

The working class during the first decade after independence was politically and numerically weak and the peasantry except in certain pockets, was politically passive due to its age-old servitude and deeply rooted religions superstitions. In these circumstance, the Indian bourgeoisie felt more secure and tried to prevent the potential upsurge of social-revolutionary forces " by making an all-out effort to lay the foundations for the evolution of an indigenous industrial capitalism, to create a modern capitalist state." The success of such an undertaking depended "on the quality of its leadership, on its determination to dislodge the feudal and comprador elements from their position of dominance, on the intensity of the resistance on their part, and on the extent to which the inter-national constellation permits the elimination or considerable weakening of the support given to these strata by the world's imperialist powers."[6]

In India, the united front of anti-imperialist forces was still, though precariously, intact, and provided the broad political basic for the government of the national bourgeoisie. But this breadth of the national coalition which accounted for the great electoral strength of the Congress Party in sweeping general elections at this time was also responsible for paralysing the administrative machinery of the state. Though the Congress leadership still enjoyed the overwhelming media and popular support, it encountered some unsurmountable obstacles in formulating and implementing a programme of social and economic change. While intending to promote the growth of capitalist industrialization, it lacked courage to offend the interests of the landlords. While trying to reduce the most outragious inequalities, it failed to interfere with the vested interests of the traders and usurers. It wished to improve the miserable condition of the workers but was also fearful of antogonising capitalists. Though anti-imperialist by tradition, the Congress was now courting favours from foreign capital.

The contradictions of Nehru's policy were limitless. On the one hand, Nehru assured the Indian capitalists that he was determined to promote and protect their private property. On the other, he promised the nation and the working class a 'socialist pattern of society.' Nehru was presiding over a Bonapartist regime which stood above the struggle of opposing classes though this merely reflected the stage which the class struggle had reached in Indian society at that time. Nehru was anxious to reconcile irreconcilable needs, to compose radical differences and to find compromises where

4. John Edward Dalberg Acton, *Essays on Freedom and Power,* p. 224.
5. Paul Baran, *Political Economy of Growth,* p. 368.
6. *Ibid,* p. 369.

cal differences and to find compromises where decisions could not be avoided. Losing much precious time in bridging recurring conflicts, the *Congress system,* as Rajni Kothari puts it, substituted minor reforms for radical changes and revolutionary phrases for revolutionary actions. The Congress Party thereby endangered not only the very possibility of implementing its proclaimed programmes but even its very tenure in office.

Paul Baran's judgment on the achievement of the so-called Nehruivian Congress is harsh but, nevertheless, true. He says, "Handicapped by the heterogeneity and brittleness of its social foundations and by the ideological limitations resulting therefrom, the essentially petty bourgeonis regime is incapable of providing genuine leadership in the battle for industrialization, is powerless to mobilize what is most important: the enthusiasm and the creative energies of the broad popular masses for a decisive assault on the country's backwardness, poverty, and lethargy."[7] In India, it is only the state that can mobilize the surplus present potentially in the economic system. It alone has the capacity to employ it for the expansion of the nation's productive forces. In India the amount of resources seized by the state is much *smaller* than the potential economic surplus. Even more important is the fact that the use made of it, despite good intentions, does not provide for rapid and balanced economic growth. As the *Economist* commented, "like the Red Queen, India has to run fast even to stand still."[8]

Persistent Centrism of Indian Politics

According to Lloyd and Susanne Rudolph, the outstanding characteristic of Indian politics has been its persistence of centrism. During three decades and five successive Lok Sabha Elections (1952, 1957, 1962, 1967, and 1971), the Indian National Congress was the dominant party among India's several parties. The ruling Congress Party benefited from three factors: (1) It had an apex body with a leadership and national goals which provided democratic legitimacy and bargaining power for a sub-continental state that included different regional political parties, (2) a centrist ideology of secularism, liberal democracy, socialist pattern and mixed economy; and (3) a pluralist basis of support that encompassed several interests, strata, communities and regions. These features also applied to the Janata Party, which won the sixth Lok Sabha election in 1977; the Congress led by Indira that won the seventh Lok Sabha election in 1980 and the Congress led by Rajiv in the eighth Lok Sabha election of 1984; and the several parties that split from Congress from time to time.

The reasons for this continued feature of dominant centrist trend in Indian politics have been listed by Rudolph and Rudolph as follows: "(1) The marginality of class politics, (2) The fragmentation of the confessional majority: (3) The electoral strength of disadvantaged confessional and social minorities, (4) The increasing political consciousness and effectiveness of "bullock capilatists' and 'backward classes;' (5) The imperatives of capturing power in Delhi; (6) The constraints imposed on India's federal system by cultural diversity and social pluralism; and (7) The advantages that accrue to a centrist national party or coalition when parliamentary seats are won by pluralities in single-member constituencies."[9]

An important condition for centrism is the marginality of class politics at national level. To some, class politics may seem inevitable in India with so much poverty, injustice and inequality. But the weakness of class organization and lack of class consciousness in the subordinate classes are the principal factors which have made class polarization difficult to achieve at an all-India level. Groups representing language, caste, community, and region and those speaking for scheduled castes, tribes and Muslims have been more successful than class-oriented organizations in creating a sense of identity and in influencing political decision-making.

Unlike Europe, Labour, Socialist and Communist Parties have not yet become national role-players and all-India phenomena and so there in no direct and visible confrontation between labour and capital. There is no national Conservative party either. The Swatantra Party was the closest approximation to an Indian Conservative party but its existence proved ephemeral. The Bharatiya Jan Sangh and its

7. *Ibid,* p. 370.
8. "India—Progress and Plan" (22 January 1955).
9. Lloyd Rudolph and Susanne Rudolph, *In Pursuit of Lakshmi,* p. 19.

progeny the Bharatiya Janata Party constitute an amalgam of *hindutva* and conservatism but its has yet to overcome its Hindi heartland identity. At present, corporate capital in India finances two major political parties, the Indian National Congress and the Bhartiya Janata Party. But they have yet to establish their authenticity as class-oriented right parties of the conservative type, though they are in the process of doing so as their common support to policies of economic liberalistion, privatization and globalization has shown during the previous two decades.

But it is difficult to agree with the thesis of the Rudolph couple that the two historic adversaries are playing a marginal role in Indian politics just because it is not adequately reflected in the nomenclature of political parties or the ideological masks that they wear. Nor can it be explained by the so called centrality of a third factor, the state. The state in India has built a public sector only to promote the growth of a private sector and bureaucratic capitalism and corporate capitalism have been intimate allies under the benevolent guardianship of a ruling elite under the Congress or Non-Congress system of governance.

The fragmentation of organized labour into several national federations has not prevented it from waging local and nation-wide struggles both against the state bureaucracy and private capital. Organized capital has also been quite influential in promoting its class interests through financing political parties and through pressuring state administration. Even the Rudolph couple has to conclude by saying: "Business' interests in India, while not publicly represented in comparative party politics (this statement is doubtful), are better represented than those of organized labour in bureaucratic, parliamentary, and (informal) party processes... business interests in India focus their attention on executive agencies... Business contributions to political parties are an invisible but important channel of influence... Private-sector capitalists can also influence how the government applies and implements controls and regulations that affect very major area of decision: investment, expansion, new products, foreign exchange and collaboration, location, and pricing."[10]

India's 'permit-licence raj' gave private-sector capitalism protected markets and monopoly profits. Even the Birla-owned *Hindustan Times* admitted in its editorial, "Over the last thirty years of Indian socialism and mixed-economy, the private sector has flourished and prospered many times over; much of the prosperity can be traced to the private sector's capacity and ability to influence governmental policies and laws,"[11] Rudolphs point out, "This interpretation of the relationship between private-sector capitalism and the state has led the neo-Marxist left to argue that the tail wags the dog, that despite the state's socialist claims and its command of the economy's industrial and financial heights, it serves capitalists and capitalism."[12]

But this view, according to Rudolphs, ingnores the "dependent nature of private capitalism in India. He quotes with approval Kochanek's opinion in this context," Business has never succeeded in blocking or even in modifying a major distributive policy in India... (it) could not delay or modify the decisions to nationalize life insurance... (or) stop the nationalization of private sector banks... what business *can* do however, is to try to convert a redistributive issue into a regulatory issue in which its interest seems self-evident rather than self-serving."[13] By 1984, state capitalism was perceived by its critics as the problem rather than the solution. This shift in the public perception of the state affected its legitimacy in directing the planned and private-sector economies and enhanced private capital's public standing and prestige in relation to state capitalism. "Despite this altered ideological climate, the state as third sector continued to dwarf both of the historic adversaries of class politics, capital as well as labour. Neither was in a position to challenge the centrist feature of Indian politics."[14]

Confessional and Minority Politics

The term 'confessional' may sound unfamiliar to Indian ears. It has been used by Lloyd Rudolph and Susanne Rudolph to denote non-secular, communal or religion-oriented politics in the Indian context. Centrist ideology in India

10. Rudolph and Rudolph, *In Pursuit of Lakshmi* pp. 31-32.
11. *The Hindustan Times*, February 6, 1984.
12. Rudolph and Rudolph, *In Pursuit of Lakshmi*, pp. 32-33.
13. Kochanek, *Business and Politics in India*, p. 329.
14. Lloyd Rudolph and Susanne Rudolph, *In Pursuit of Lakshmi*, p. 35.

includes secularism as a part of its liberal ethos Despite temptations to adopt a Hindu identify and programme, the Congress and other centrist parties have retained their commitment to secularism. In Western Europe the roots of confessional politics go back to the Reformation in the sixteenth century. It unleashed a civil war in several Europan countries. But it also gave birth to a secularizing process that contributed to the separation of church and state and to religious tolerance. In modern Europe, we have Christian Democrats and Christian Socialists who pursue policy aims which are consistent with their religious beliefs.

It is the European sense of confessional politics that the Rudolph couple has in mind when he intends to find out whether confessional politics in India could again give rise to a 'destructive' cleavage in Indian politics. The obvious aspirant for national confessional politics is the 'Hindu majority.' But this majority, according to them, is an 'artifact of categorization' that encompasses a diversity of gods, goddesses, holy texts, social customs, ontologies and epistomologies. "Without an organized Church, it is innocent of orthodoxy, heterodoxy, and heresy. Thus, until the transforming historical events and experiences that surfaced during the Janata government (1997-79) and crested in the early 1980s, the 'Hindu majority' remained an illusory support base for a national confessional party. At the same time, minority religious communities—Muslims, Sikhs, and Christians were able to play a role in state politics."[15] More important, the Hindu majority was more fragmented along sect, caste, class and regional lines of cleavage than were India's minority religious communities.

Before the emergency regime of Indira Gandhi, its was the Jan Sangh and Rashtriya Swayamsevak Sangh that articulated and propagated the ideology of Hindu nationalism. Hindu confessional politics was India's counterpart to the ideology of Islamic Pakistan. However, the ideological and military threat of Pakistan could not sustain and give much political support to Hindu confessional politics before 1980. Jan Sangh could capture only 9 per cent votes in 1967 and 7.4 per cent in 1971 Lok Sabha elections which were its best performances. The break-up of Pakistan in 1971 as a result of India's military victory reduced the potential influence of Hindu confessional politics for a decade.

The Indian Republic began its career with a powerful commitment not only to a secular state but also to secularism as an ideology. It was challenged after 1980 when growing conflict among Hindus, Sikhs and Muslims made the latent contradictions manifest. The contradiction in the Indian concept of secularism was its simultaneous commitment to equal citizenship and to autonomous committees. Group identities were equally recognized by the British and nationalist rulers and this obstructed the growth of the concept of equal citizenship based on the rights of the individual. For Gandhi, confessional politics was a vehicle of community reform — Khilafat agitation, campaign for Gurdwara reform and the ongoing massive campaign, against untouchability politicized Muslim, Sikh and Hindu communities.

By contrast, Nehru could not take religion seriously or recognize groups as valid components of the Indian nation. For him, the Muslim League before partition was just a group of Muslim landlords and nothing else. He did not visualize that this landlord clique could lay the foundation of an independent Muslim nation. He dismissed Hindu Mahasabha, Jan Sangh and the Akalis as political groups, which have no future in a secularist, Indian Republic. He thought that confessional politics was irrelevant in the context of more important issues of economic development, democratic rights of individuals and social and cultural modernization.

In the 1980s, the Hinduism that had been an 'artifact of categorization' began to transform itself into a *Hindutva*, a condition of national consciousness. This development created an environment for the growth of a national Hindu confessional politics. Religious celebrations, demonstrations and performances began to acquire all-India dimensions. Hindu festivals became the occasions for displaying Hindu solidarity and militant nationalism. The Vishwa Hindu Parishad organized the Hindu holy men and their lay devotes into a noisy, strident and militant forum trying to play the role of a vanguard for Hindu nationalism. The Bajrang Dal emerged as the lumpen stormtroopers of

15. *Ibid.* p. 37.

the Sangh *parivar* embracing the BJP, RSS, and the VHP. Romesh Thapar observed in 1986, "Imagine sects of Hindu priests... moving from mandatory caste signs to other symbols of the faith—dhoti-clad, bare to the waist, trident equipped, and with the *bodi* tuft of hair.... soon the cult could take over in our offices as an exercise of the fundemental rights embodied in our Constitution... the Muslims could overnight don the red fez.. to this could be added the trimmed beard of the *mullahs* and *maulvis*.. we are on the edge of encouraging a multitude of what are called 'psyches' one for each community, each caste, each tribe. "[16]

Hindu confessional politics became a form of cultural nationalism for the Hindu heartland states. It was also exported to states where Hindus are a minority like Kashmir's Jammu region, the Punjab and Christianized North-East. Besides, it spread to Maharashtra and Gujarat which are closest to Hindi Heartland culture. The Janata Party's victory in 1977 put the advocates of Hindu confessional politics in the Central Government for the first time. The issue of conversion and the content of textbooks was used to articulate the Hindu grievances and to argue that Hinduism was threatened by India's minority religions. "The supporters of the Hindu backlash alleged that the minorities were privileged and pampered... Congress governments... were charged with appeasing the minorities out of political expediency."[17]

The cohesiveness and scale of India's minority groups contributes to the illusory nature of the Hindu majority. It also constitutes a hindrance to the practice of Hindu communal politics and obstructs the functioning of a Hindu confessional party. India's minorities like the American blacks, appear to share a 'group consciousness '. This helps them to achieve relatively higher levels of political participation than their social and economic status would lead one to expect. Group consciousness persuaded Muslims and scheduled castes to vote in larger proportions for the secularist Congress than did other voters in the first-three general elections. However, since the fourth general election, Muslims and scheduled castes have voted less cohesively as compared to the scheduled tribes. Electoral support of Muslims and *dalits* is vital for success especially in the five Hindu Heartland states of northern India. In these states vote swings have been widest since 1967. Minorities are very significant in number in just those states where elections since 1967 have been most volatile. These states elect 39 per cent of parliament's 545 members. The three minorities together constitute 37 per cent of the electorate in Biher, Uttar Pradesh and Madhya Pradesh, 34 per cent in Rajasthan, and 23 per cent in Haryana. Congress victories in 1971, 1980, and 1984 were due in part to strong support among minorities. Defeats in 1977, 1989, 1996, 1998 and 1999 low voter support in 1980 and 1991 were associated with defection by the miniorities.

The electoral successes of the Congress Party under Jawaharlal Nehru, Indira Gandhi and Rajiv Gandhi were largely enabled by support from India's largest minorities, Muslims and the Scheduled Castes. Janata's' success in 1977 election reflected a new minority alienation from Congress. Since 1980 in both centre and state elections, the minority constituencies have consistently voted for the winning party, if it was at the same time a centrist party as well. The distribution of minority electoral support in the last seven parliamentary elections from 1977 to 1998 indicates that the minorities, rather than engaging in bloc voting for Congress, have responded to the centrist appeals of winning parties. Lloyd and Susanne Rudolph point out correctly, "Parties whose ideology, policies, and electoral strategy do not attend to representing minority interests and identities cannot compete for power at the national level. Centrist parties, in the coded language of Indian politics, espouse secularism and socialism to signal their regard and concern for the 38 per cent of the electorate who are poor and oppressed minority voters".[18]

Bharatiya Janata Party—Origins

In order to understand the genesis of the Bharatiya Janata Party, it is necessary to go back to Hindu Mahasabha, which was the Hindu confessional party before independence, the Rashtriya Swayamsevak Sangh, which was founded by Dr. Hedgevar in 1925 and the Jan Sangh, which was founded by Dr. Shyama

16. *Economic and Political Weekly*, January 7, 1986.
17. Rudolph and Rudolph, *In Pursuit of Lakshmi*, pp. 41-42.
18. *Ibid*, p. 49.

Sangh, which was founded by Dr. Shyama Prasad Mukherji just before the first general election in 1952. Its ideological inspiration also came from Hindu-minded Congressmen like B. G. Tilak, Lajpat Rai, Madan Mohan Malaviya, Vallabhbhai Patel and P. D. Tandan. Besides, both the present BJP and its predecessor Jan Sangh have been closely associated with non-confessional right wing parties like the Swatantra Parlay founded by C. Rajgopalachari, which later merged with the Bharatiya Lok Dal, led by Charan Singh. In 1950s it was also allied to Ram Rajya Parishad and Hindu Mahasabha, which were both Hindu confessional groups, at the parliamentary level.

Righwting political parties could be divided into two categories:(1) feudalistic, communal and confessional groups., and (2) conserative, bourgeois- oriented groups. In the first general election the rightwing parties, including the confessional groups, secured 3,30,00,000 (three crore and thirty lakh) votes, which was 70 per cent of the votes secured by the Congress Party. The Communists and Socialists together got 2,80,00,000 (two crore and eighty lakh) votes. Even then, Congress secured 375 seats, the rightwning parties got only 75 seats, and the Left had to be satisfied with just 49 seats. Among feudal, Communal and confessional groups the Jan Sangh has a prominent place. In the first Lok Sabha election it got 3.5 per cent votes and stood fifth in its ranking.

Jan Sangh, Hindu Mahasabha, and Ram Rajya Parishad together secured one crore (1,00,00,000) votes. These three parties believed in the ideology of Hindu nalionalism and the ideals of Hindu culture and were hostile to Islamic Pakistan, western culture, Christianity, socialism, communism, Soviet Russia and Communist China. These parties denigrated Prime Minister Nehru as the 'Nationalist Muslims', a' Russian- Chinese agent' or an ' ape who imitates the west ' all the time. The RSS and the Anand Marg participated in politics in a clandestine manner. These elements were responsible for the assassination of Mahatma Gandhi. Some critics have considered them the Indian versions of fascism. During the pre-emergency period, the Hindu Confessional forces and their reactionary allies had openly ganged up against the Congress regime.

Among the conservative bourgeois-oriented groups main allies of Jan Sangh were the Swatantra Party and the BKD. C. Rajgopalachari founded the Swatantra Party in 1959 as classic rightwing and prol business party. Like Jan Sangh, both Swatantra and BKD opposed Congress-sponsored and Left-supported policies of land reforms, the setting up of co-operative institutions, growth of the public sector, planning and socialism. All of them supported development through capitalism and private enterprise, demanded subsidies for rich farmers, reduction of income tax, facilities for foreign investments and an end to the 'licence permit raj'.

The principal supporters of the Swatautra Party set up institutions like the 'Forum for Free Enterprise,' and the 'Federation of Indian Agriculturists'. In the 1962 Lok Sabha elections, the Tata industrial house provided enormous financial support to the Swatantra Party. This was because the Swatantra Party's programme had incorporated the demand of India's monopoly capital that the state should abandon its strategy of promoting 'state socialism' and adopt the policy of encouraging private capital including foreign capital. However, Charles Betthheim said," Even then big capitalists, despite their great fondness for the Swafatra Party, have not severed their relationships with the Congress Party. It seems that they have perhaps helped the Swatantara Party so that they can create an alternative to Congress in future and if the Congress Party were to desert them in order to support some other vested interests, then the other party could be used to put pressure on Congress."[19]

In addition to monopoly capitalists, the princes and landowners also joined the Swatantra Party and the Ganatantra Parishad in Orissa, which represented the feudal forces there, merged with this party. Maharani Gayatri Devi led this party in Rajasthan. In Andhra Pradesh, rich farmers joined this party. In 1967 Lok Sabha elections, Jan Sangh secured 35 seats but the Swatantra Party got 44 seats and became the main opposition group. The righist parties together could win, more than 100 seats. Except West Bengal and Kerala, rightwing parties were the chief components of the several non-Congress governments which were set up at state level in different states between 1967 and 1972.

19. Charles Bettleheim, India Independent, p. 350

came an important political constituent of the right wing governments that were set up in Uttar Pradesh, Madhya Predesh and Bihar. In Punjab, the Jan Sangh and the Akali Dal formed an alliance.

In 1971 Lok Sabha election, Jan Sangh, Congress-O (a splinter group led by Morarji Desai), Swatantra Party, BKD and Lohia Socialists formed a 'Grand Alliance "to fight Indira-led Congress-R. This grand coalition had 160 seats in Lok Sabha be fore the general election but could get only 50 seats in the new Lok Sabha. Indira Gandhi swept the mid-term polls and established a stable government obtaining a two-third majority in the fifth Lok Sabha. India's victory in the Bangladesh war further strengthened Indira Gandhi's position as a national leader and Congress Party supremo. However, she made certain mistakes in running the government and could not find answers for resolving the growing economic crisis. She toppled opposition-led governments in the states without discretion and changed even Congress chief ministers just to assert her imperial authority. Her authoritarian tactics displeased all right-wing parties, antagonized left-wing political formations except CPI and even some Congress factions.

Jaya Prakash Narayan emerged from his political hibernation to lead an anti-Congress youth movement which had its major base in Gujarat. It later spread to Bihar. Narayan raised the slogan of 'Total Revolution' and overthrow of the corrupt Congress regime led by Indira Gandhi. When JP movement, supported by student and opposition groups including Jan Sangh, started gathering momentum, Indira Gandhi imposed a national emergency putting a large number of agitating leaders and their followers in prison. The rigours and excesses of the emergency regime united all struggling opposition parties into an all-inclusive political formation, once Mrs. Gandhi decided to lift the emergency after a period of 'dictatorial' repression extending to eighteen months.

Jan Sangh also merged its identity in the new political formation designated as the Janata Party. Other political parties, which joined the Janata band-wagon, included Congress-O led by Morarji Desai, BKD led by Charan Singh, the Socialists led by Madhu Limaye etc. and Congress for Democracy led by Jagjivan Ram. The victorious Janata Party got 300 seats in the Lok Sabha out of 542 with 43 per cent votes. The defeated Congress Party was reduced to 153 seats with 34 per cent votes. Janata Party dissolved nine state governments by proclaiming President's rule holding new elections and winning most of them. CPI (Marxist) came to power in West Bangal in 1977 and since then it has been winning all state and parliamentary elections which have been held there.

In the sixth Lok Sabha, Jan Sangh led by A. B. Vajpayee, external affairs minister had ninety seats (31 per cent),

Bharatiya Lok Dal led by Charan Singh, some ministers, had fifty-five (19 per cent), the socialists led by George Fernandes, industries minister, had fifty-one (17 per cent,) and Congress for Democracy, led by Jagjivan Ram, defence minister, had twenty-eight (10 per cent). When the Janata Party broke up into its constituent fractions, the Jan Sangh component, after the seventh Lok Sabha elections, reconstituted itself as the Bharatiya Janata Party. In 1980, the BJP had only 16 seats. In the next Lok Sabha election in 1984 it was almost wiped out by Rajiv Gandhi hurricane and left with just two seats there.

Minority and Coalition Governments

Bharatiya Janata Party's electoral success in the ninth Lok Sabha elections in 1989 was a morale- booster for the party. From the incredibly low figure of two seats in the eighth general election, its score now jumped to 85 seats. It was able to improve its tally to 120 seats in the tenth Lok Sabha in 1991. During this interregnum, the party's ideologue and leader, A.B. Vajpayee had endeavoured to give a new centrist image to the BJP distancing it from the right-wing, communal programme of the Jan Sangh. He also appreciated Gandhi's economic ideas and JP's philosophy of *Sarvodaya* and decentratised democracy. But L.K. Advani continued to emphasize BJP's commitment to the saffron programme of *hindutra* and cultural nationalism. But Vajpayee was quite determined to give a more liberal, secular and democratic image to Hindu nationalism, in spite of its latent contradictions.

This was done by interchanging and absorbing the values and experiences of the JP movement (1973 – 75), the emergency resistance struggle (1975-77), and the Janata experiment (1977-80), The RSS- BJS legacy was sought to be diluted by the social vision of the Janata-JP

movement. However, this was more a mask than a real transformation. Yet it worked for some time. The emergence of V.P.Singh's Jan Morcha in 1987 represented a crucial development in Indian politics. After some time, he succeeded in forging a united opposition party—the Janata Dal. V.P. Singh followed a clever policy of equidistance from both the BJP and the Left. Despite differences on some major issues like Art. 370 etc. the BJP and Janata Dal entered into a mutually beneficial seats arrangements without entering into an electoral alliance.

In a protest against Rajiv Gandhi's refusal to resign on the Bofors issue, the entire opposition, including two BJP members, resigned from Lok Sabha. The Bofors corruption issue proved decisive in the defeat of Congress in 1989 elections. As a result, the Janata Dal, led by V.P. Singh, which secured 142 seats formed a minority government with the outside support of both the BJP and the Left. V.P. Singh minority government survived for a year but L.K. Advani's Rath Yatra, his arrest by Laloo Prashad's government in Bihar, the contentious issue of Ram Janmabhuni Temple, the sudden implementation of the Mandal Report giving 27 per cent representation to the OBC's created fissure in the JD-BJP coalition. V.P.Singh government fell when Congress and BJP ganged up to overthrow it. The outcome was another minority government led by the rump Janata Dal under Chandra Shekhar's leadership, which was supported by Rajiv Gandhi's Congress from outside. It was a case of a tail wagging the dog. This government also fell after a few months when Congress withdrew its support on a non-isssue.

This led to the holding of midterm elections in 1991, the tragic assassination of Rajiv Gandhi by alleged LTT extremists and the return to power by a minority Congress regime led by Narasimha Rao. Rao engineered defections from Jharkhand and some other parties and succeeded in gaining absolute majority in Parliament and governed for a full term of five years. The general election for the eleventh Lok Sahba again resulted in a fractured verdict but the BJP for the first time emerged as the largest single party in Indian Parliament. Dr S.D. Sharma, the President of India, then created history of some sort by inviting the BJP leader, A.B.Vajpayee, to form a government. The BJP remained in power uncomfortably for just thirteen days, could not find a single additional supporter to its otherwise impressive tally of 160 seats, and tendered its resignation when it lost the confidence vote in the Parliament. Consequently, two minority third front governments were successively installed led by Deve Gowda and I.K.Gujral respectively which were at the mercy of Sita Ram Kesri-led Congress Party. Both the governments were toppled when the cynical Congress leadership decided to withdraw its external support, thus, forcing mid-term elections in March 1998.

The outcome of the 12th Lok Sabha elections in March 1998 was far from being conclusive. This fragmented verdict was not entirely unexpected. Neither the BJP nor the Congress, even with their socalled alliance partners, could manage to secure a clear majority in Parliament, although the BJP did emerge as both the largest single party and as the leader of the largest alliance of parties. "The performance of the BJP", as the *Economic and Political Weekly* admitted, "marks, once again, an advance for the party in terms of the number of seats won, the proportion of votes polled and the evidence of expansion of support for it to new parts of the country."[20] Despite Sonia Gandhi's high profile campaign, the party failed to increase its tally of seats in the new house and its share of votes was actually smaller this time than in 1996.

It was the United Front, the aspiring third force in Indian politics, which came out the worst off in these elections, with the Janata Dal, the socalled leader of this third force, was almost decimated. Along with the decline of the JD, the regional components of the erstwhile United Front, such as the DMK, the TMC, the TDP and the AGP also suffered severe losses. They should now worry about threats to their position in their own states while their role at the national level has been consideradely diminished. The vote for the Left parties, confined as they are to Kerala and West Bengal, has further declined from 9.1 per cent to 7.7 per cent though by default they have remained the principal actors in the diminished third front.

The seats and votes lost by the JD and constituents of the United Front have gone to other single-state splinter parties such as the

20. *Economic and Political Weekly*—Editorial, 7 March, 1998

AIDMK, BJD, RJD, making for the fractured and inconclusive electoral outcome. The CPI(M) and the CPI, in a typical Pavlovian reaction, declared that their parties and the United Front would support a Congress government to prevent the BJP form coming to power. However, the support of the TDP, once convener of the United Front, now extended to the BJP led government proved crucial in the formation of A.B. Vajpayee's Ministry. The new BJP led government naturally lacked any ideological and programmatic coherence, as was the case with the two United Front governments, which had ruled for the last twenty-one months. With the aid of a lack-lustre, chauvinistic national agenda, which ostensibly excluded some controversial issues like Ayodhya, Art. 370 and the Uniform Civil Code, the main concern of this opportunistic and unprincipled alliance government was mere physical survival at any cost.

The Editorial concluded by saying : "It will equally naturally have to get busy actively covering up well established cases of corruption and abuse of governmental authority, whether it be Bofors or the venalities of that current object of adoration of BJP leaders, J Jayalalitha, to mention just two out of an indeed rich pantheon. It may even be pushed into tampering with the Constitution to dismiss this or that duly elected state government. Such in sum is the quality of governance that is in store for the citizen, though the political fixers and wheeler-dealers, the self styled king makers and 'Chanakyas' will be undoubtedly in their elements once again"[21] Most of this prognosis about the BJP-led coalition government has proved correct. This government was essentially a regime of the Hindu Right, diluted and shaped to an extent, by the narrow interests of some of its coalition partners. It was finally brought down by the defection of the largest and most volatile ally, the AIDMK.

The BJP regime was communal and divisive in its outlook and approach. It colluded with the RSS's longstanding project of minority-baiting. It permitted the most fascistic members of the saffron outfit to unleash the politics of hatred and terror especially against the Christian minority, ostensibly on the issue of 'conversion.' Although the national agenda of governance excluded the BJP demands on the Ram temple, Article 370 and Uniform Civil Code, the regime endangered the nation's commitment to secularism and the scarcity of the rule of law. Murli Manohar Joshi's plan even attempted to saffronise education, though it proved abortive. A.B.Vajpayee "hijacked India's independent and peace-oriented, nuclear policy, twisted it out of shape, and imposed on the people of India and Pakistan a dangerous costly new nuclear arms race. It has only undermined bilateral relations with China and Pakistan, before attempting unsuccessfully and unconvincingly, to repair some of the damage. Its economic policy, following the Pokhran nuclear explosions and the imposition of sanctions by the United States and some of its allies, was...a policy of 'placating foreign governments and international capital by offering economic concessions, through greater liberalisation, greater incentives for foreign investors and offerring the opportunity to enter captive Indian markets and buy up domestic assets cheaply;"[22]

In addition, the BJP regime put destabilising pressure on federalism and co-operative Center-State relations by using Article 356 to dismiss the elected RJD government in Bihar, thus cynically threatening the existence of other legitimate governments at the state level. "Through its determination to hang on to power after clearly forfeiting parliamentary legitimacy, it forced the polity to register a new low in sordid opportunism and horse-trading. In sum, the BJP led regime set an unmatched - and difficult to match- record of divisive, reactionary and chauvinist misgovernnance."[23] Yet the people of India showed a better judgment of this government of the Hindu Right, when they booted out these saffron governments in Rajasthan and Delhi and disallowed the BJP to win power in Madhya Pradesh.

The state elections showed that the masses of the people were alienated by sharp rises in the prices of essential commodities and by the communal, divisive and inept governance. The constant tensions and vacillations within the coalition government were reflective of this truth of alienation from the electorate. It appeared that the saffron cause was in headlong retreat

21. *Economic and Political Weekly* — Editorial, 7 March, 1998, p. 491.
22. *Frontline*, Editorial, May 7,1999, p. 7.
23. *Ibid*, p. 7.

retreat in the national political arena. The pendulum had swung in favour of the BJP's main antagonist, the Congress-I led by Sonia Gandhi. The only viable interim government that can be formed, before the elections for the 13th Lok Sabha, would conceivably be a minority Congress-I government supported from outside by all anti-BJP partices. This interim regime can serve two constructive purposes, First, it must recommit the Indian state to a course of secular democracy. Secondly, it must enable the nation to get off the nuclear tiger.

The fall of the BJP led coalition government clearly demonstrated how the Indian political system, which was based on one party dominance in the past, has been transformed into a chaotic multi-party system. The following is the detailed pattern of voting on the crucial confidence motion on 17 April, 1999, in the 12th Lok Sabha, having an effective strength of 542 members:[24]

Those voting Against-270		Those voting For - 269	
Congres-I	139	BJP	182
CPI(M)	32	Samata	12
AIDMK	17	Telugu Desam	11
SP	20	BJD	9
RJD	16	Akali Dal	8
CPI	8	Trinamul	7
Janata Dal	6	DMK	6
RSP	5	Shiv Sena	6
BSP	5	PMK	4
RPI	4	INLD	4
TMC	3	MDMK	3
F.B.	2	Lok Shakti	3
IUML	2	National Conference	2
Majlis (Owaisi)	1	Maneka Gandhi	1
Janata Party	1	TRC	1
ASDI	1	RJP (Anand)	1
Arunachal Cong.(M)	2	1Arunachal Cong.	1
AIIC(Ola)	1	HVP	1
SJP	1	SDF	1
NC (Soz)	1	Independents	3
Kerala Congress	1	(Satanam Singh,	
Buta Singh	1	Lallungmauna and	
PWP	1	S.Biswamuithiary)	1
		MSCP	1
		Nominated	2

R. Muthiah (AIDMK) did not vote; Kim Gangte (CPI) and Malti Devi (RJD) were absent; Speaker-1, Vacancies–2.

Another Mid-term Election

After the defeat of the BJP-led government on 17 April, 1999, the Congress led by Sonia Gandhi decided, with the concurrence of her chosen party leaders, particularly Arjun Singh, to explore the possibility of setting up a Congress-led minority government with the outside support of all other parties and individuals that had voted to overthrow the Vajpayee government. The CPI(M) leader, Harkishan Singh Surjeet tried to secure the support of the left and other secular parties for the proposed Congress-led minority government. The leader of the Samajvadi Party, Mulayam Singh, and the leaders of the Revolutionery Socialist Party and the Forward Bloc with 27 votes refused to support any prospective Congress government. The leader of the Bahujan Samaj Party with 5 members said that she could not pledge her support to any government in advance. Mrs Gandhi, therefore, could gather support only from 239 MPs which was not enough to form a new government. The proposal to set up Jyoti Basu as the new Prime Minister remained a non-starter as the Congress declared that it could not lend its support to 'any third or fourth front government' at that late stage. Earlier the CPI(M) itself had scuttled the candidature of Jyoti Basu for the post.

On 26 April, 1999, President K.R.Narayanan dissolved the 12th Lok Sabha after getting recommendation from the caretaker Vajpayee government for doing the same. A Rashtrapati Bhawan communique said that the President has, by his order under sub- clause (b) of clause two of Article 85 of the Constitution, dissolved the 12th Lok Sabha. The four page communique observed tersely that "the ruling alliance lost its majority because of lack of cohesion within its ranks and those who voted out the alliance showed the same disunity while trying to form an alternative government. In this situation, the President reached the conclusion that time had arrived for the democratic will of the people to be ascertained once again, so that a government can be formed, which can confidently address

24. *The Hindu*, 18 April,1999; (Note— Total strength of Lok Sabha is 545).

the urgent needs of the people."[25]

The communique referred to the ruling alliance's plea that since the opposition had failed, the BJP should be given another chance to form its government. The President turned down the request finding no merit in its proposal. The President told Congress Chief Sonia Gandhi that inviting the Congress when its support base in the Lok Sabha remained well short of the ruling coalition's proven strength of 269, was out of the question. The President added, "The recourse to dissolution on the defeat of a minority/coalition government arises when it appears to the President that a stable government connot be formed without a general election"[26]

Thus, the 12 the Lok Sabha has had the shortest term so far— a little over 13 months or 412 days in all. Constituted on 10th March, 1998, it had to be dissolved on 26th April, 1999 after the BJP- led coalition government, headed by Atal Behari Vajpayee, lost the confidence vote by a wafer thin margin of one vote. With the opposition attempts to form an alternative government ending in a stalemate, the dissolution was the only option left before President Narayanan.

The ninth Lok Sabha which saw two Prime Ministers — V.P.Singh and Chandrashekhar — was the second shortest completing only 15 months. Constituted on 2nd December 1989, the House was dissolved on 13th March, 1991, after a series of crises destabilized the V.P. Singh and Chandrashekhar governments, both of them minority regimes, supported from outside by the BJP, (CPI(M) and the Congress-I respectively. The life of the 11th Lok Sabha, which saw the arrival and departure of three successive Prime Ministers, was also cut short by the inherent dangers of all minority regimes which depend on the external support of a single party.

While A.B.Vajpayee resigned after being unable to cobble together a majority in the 11th Lok Sabha, H.D. Deve Gowda had to quit when Sita Ram Kesri suddenly withdrew the Congress -I support to his government. I.K. Gujral presided over a similar United Front government, minus Deve Gorda, but he also had to quit unceremoniously when Kesri employed the same trick to unseat him from his post. The 11th Lok Sabha had a life of 18 months- and-a-half only from 15 May 1996 to 4 December, 1997.

In the last one decade, the only exception to this rule was the 10th Lok Sabha which continued for its full five years term. It was a minority government too but its leadder P.V. Narasimha Rao was able to establish his majority in the Lok Sabha by successfully engineering defections from some smaller opposition parties. The 10th Lok Sabha was formed on 20th June, 1991 and was dissolved on 5th May, 1996.

The Twelve Lok Sabhas[27]

Date of Constitution	Date	Dissolution
First Lok Sabha	17.4.1952	24.4.1957
Second Lok Sabha	5.4.1957	31.3.1962
Third Lok Sabha	2.4.1962	3.3.1967
Fourth Lok Sabha	4.3.1967	27.12.1970
Fifth Lok Sabha	15.3.1971	18.1.1977
Sixth Lok Sabha	23.3.1977	22.8.1979
Seventh Lok Sabha	10.1.1980	31.12.1984
Eighth Lok Sabha	31.12.1984	27.11.1989
Ninth Lok Sabha	2.12.1989	13.3.1991
Tenth Lok Sabha	20.6.1991	10.5.1996
Eleventh Lok Sabha	15.5.1996	4.12.1997
Twelfth Lok Sabha	10.3.1998	26.4.1999

There has been a quantitative shift in the Indian political system from one-party dominance of the Nehru-Gandhi era to multi-party fragmentation of the last decade which has led to instability of Indian cabinets and the consequential shortening of the life span of the Lok Sabha. Bourgeois Parliamentarism is at its best when it succeeds in developing a stable two-party system. By its failure to do so, capitalist democracy in India is facing a crisis, plunging its political economy in turmoil. The next Lok Sabha election returned BJP-led alliance to power with A.B. Vajpayee as the Prime Minister. This government is likely to survive for a full term of five years.

SUGGESTED READINGS

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25. *The Times of India*, 27 April, 1999.
26. *Ibid*, p. 1.
27. *The Hindu*, 27 April, 1999, p. 8.