CENTRE-STATE RELATIONS AND CHANGING SCENARIO
OF INDIAN FEDERALISM

A SUMMARY OF THE THESIS SUBMITTED

The origin of the concept of federalism is a matter on which it is possible to have a variety of approaches, depending on the view which takes on the meaning of federation\(^1\). The term “Federalism” is derived from the latin word “foedus” meaning covenant. It connotes the theory or advocacy of federal political orders, where final authority is divided between sub-units and a Centre. Sovereignty is constitutionally split between at least two territorial levels so that units at each level have final authority and can act independently of the others in some area. There are thus two authorities for the citizens to oblige politically. This allocation of authority between the sub-units and the Centre may vary. In a typical style, the Centre has powers regarding defence and foreign policy, and the sub-units have powers regarding administration and local activities, trade etc., but sub-units may also have international roles. The sub-units may also participate in central decision-making bodies\(^2\).

The concept of written constitutions for governance of a nation is relatively new to human civilization. It may be one of two types - unified or federal. In a unified system of governance, the nation has only one government and it may be divided into provinces. In federal governance, the nation has a central government and it is divided into several states which have local state governments. Thus, an association of several states is call a federal nation and the concept is called federalism. Earlier, a federation was called an empire because of no written constitutions for the federation. The relationship of a state to the empire was governed by relative

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strengths of the state and the empire. At that time, federalism was covered by empiricism, hence the federations were known as empires.³

A system of government which has created, by written agreement, a central and national government to which it has distributed specified legislative (law-making) powers, and called the federal government, and regional governments (or sometimes called provinces or states) governments to which is distributed other, specified legislative powers.

Federal systems of Government are common in the modern world, partly because federalism has often seemed as an appropriate means of welding potentially incompatible communities into a nation state. Even as the English political tradition looked with disfavor on the idea of a written constitution, several federations, inscribed in constitutional texts, emerged from the disbanding of the empire. Yet, there are different kinds of federations, distinguished by different power sharing arrangements between the federal Centre and its constituent units. The Republic of India is a prominent member of this worldwide family⁴.

Given our constituent proportions, diversity of races, languages, religions, our history, and our experience in nation building during the six decades after independence, India could not but have acquired federal features. Unlike most other nations, we are not built around a single race or language or religion. Ours is perhaps a more pluralistic entity than any other nation on earth. In this complexity lie our challenge; and most definitely; our strength⁵.

The British had to reckon with this basic feature of the sub-continent as its political destiny passed into their hands. All major enactments- from the Regulating Act of 1773 through the Charter Act of 1833, the Minto-Morley Reforms of 1909, the

⁴ Ian Copland and John Richard, Federalism: Comparative perspectives from India & Australia, p.11 (1999).
⁵ Abdul Rahim Vijapur, Dimension of Federal Nation Building; essays in memory of Rasheeduddin Khan, p.vii(1998)
Montague-Chelmsford Reforms of 1921, the Government of India Act of 1935, right up to the Cripps Proposals of 1942 and the Cabinet Mission Plan of 1946—reflected the demands of our pluralistic society vis-à-vis the hegemonistic impulses of the Raj.

A constitution is not a static frame but “an organic living institution”. This is particularly true of a flexible, yet resilient, constitution like that of India, designed to meet the needs and problems of a changing society for the generations to come. Nonetheless, due to the dynamic interplay of socio-economic, political and other forces, the intent and actual working of the constitution some time tend to diverge.

Our Constitution—makers were aware of the paradoxes in our colonial history and had a clear sense of where the polity of the new India was to go. The mass nature of the freedom movement and the nation-wide awakening that had marked it, made it obvious that India’s future lay in a creative balance between the need for an effective Centre and effectively empowered regional units. A crucial committee of the Constituent Assembly—the Union Powers Committee—headed by Jawaharlal Nehru, went into the question of centralization and devolution. It deliberated the issues at length. Legislative lists were worked out at the sittings of this committee, assigning clear roles to the Centre, the Indian States and the Provinces. Its report presented to the President of the Constituent Assembly on July 5, 1947 made the unanimous recommendation that while it would be injurious to the interest of the country to provide for a weak Central authority, it would be retrograde both politically and administratively to frame a Constitution on the basis of a Unitary State. The Union Power Committee said, “the soundest framework for our Constitution is a Federation with a strong Centre.” This approach has guided us over the last fifty years. We have had problems of balance-maintenance, politically, administratively, financially and in terms of the maintenance of national security. But by and large, the system has held.

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6 Ibid.
7 Id. at p.viii.
A federal Constitution establishes a dual polity with the Union at the Centre and the States at the periphery, each endowed with powers to be exercised in the field assigned to them. The legislative, executive and the financial authority are divided between the Centre and the Units not by any law passed by the Centre but by the Constitution itself.

It has been observed that in any federal system, it is likely that there will be continued tension between federal government and the constituent polities over the years and that different balances between them will develop at different times; the existence of this tension is an integral part of federal relationship and its character does much to determine the future of federalism in each system. The very dynamism of the system with all its checks and balances brings in its wake problems and conflicts in the working of Union-State relations. Stresses, strains and irritations generated by such problems may stifle the working of the system and endanger the unity and integrity of the country. It is, therefore, necessary to review from time to time, in the light of the past experience, the evolution of Center-State arrangements not only for the purpose of identifying persistent problems and seeking their solutions, but also to attune the system to the changing times so that propelled by spirit of common endeavor and cooperative effort it takes the country ever forward towards the social welfare goals set out in the constitution.

There is thus the concept of Federalism adopted in the administration of this country, but the paradox is the Constitution itself does not designate the Government of the whole country as the Federal Government; rather it prefers to use the term ‘Union of States’, and there is a denial on the part of Union Government with regard to the federal theory followed by the Constitution in the strict sense of the term. As a consequence, serious controversies have arisen between the Union and the States in regard to various matters of national administration including the matters pertaining to the judicial system of the country.
New economic order, liberalization, globalization, privatization, comprehensive welfare programmes, persistent public sector involvement vis-à-vis private sector emergence/development in a wide range of policy concerns from environmental pollution to cultural pollution/invasion, new constitutional crisis surfacing on account of use as well as abuse of destructive vote of no-confidence, continuous threat of terrorism as well as organized crimes, internally displaced persons and alien refugees and economic interventionism, regional governments deal with foreign governments and with matters of international concern particularly foreign investment in information technology, European Union offers a unique opportunity to SAARC to respond to new challenges to federalism, a most sensitive policy area associated with environmental problems, etc. pose the constitutional-theorem problems for policy-makers and academia alike in regard to the workability of federal power-sharing and Centre-State relations.\(^8\)

Fiscal relations between the Centre and States, levying duties on goods and services in the emerging tax regime, freeing inter-state trade to establish a unified and integrated domestic market would also come under the purview of the new commission. It would also make recommendations on setting up a Central Law Enforcing Agency and supporting legislation under Article 355 etc. The Commission would also consider natural calamities like tsunami and water sharing between various States. It would not only consider the Centre-State relations but also how to obtain the cooperation of the people, NGOs in the effective governance. The ambit of the Commission is quite wide and it would take into consideration the modern techniques and methods of administration.\(^9\)

B. ORIGIN AND DEVELOPMENT OF CENTRE-STATE RELATIONS

India has geo-political and historical characteristics, which have few parallels. Its

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size and population, geographical, linguistic, religious, racial and other diversities give it the character of a sub-continent. But its natural boundaries marked by mountains and seas, serve, to identify it as a separate geographical entity. This insularity, over the years, let to the evolution of a composite cultural unity, a feeling of common heritage and a pervasive under-current of oneness. These gave the country the character of a general Indian personality\textsuperscript{10}.

India’s history is replete with brief periods of political unity and stability followed by spells of dissension, chaos and fragmentation. The strongest kingdoms, from time to time, became empires, extending their sway, more or less, to the natural boundaries of the sub-continent, bringing under their suzerainty the local principalities and kingdoms. But, undue centralizations often proved counterproductive and triggered a chain reaction of divisive forces. Whenever, due to this or other causes, the Central authority became decadent and weak, the fissiparous forces became strong and led to its disintegration, sometimes tempting foreign invaders to conquer the country\textsuperscript{11}.

The contemporary debates about federalism in India are rooted in a long-standing contestation of sovereignty. Some British historian, such as Percival Spear and Wolseley Haig, have traced federal administrative elements in India as far back as the Moghuls, beginning with Sher Shah’s land revenue system and taking shape with Akbar’s division of his empire into 12 subahs or provinces\textsuperscript{12}. These historians among others, argued that Moghul rule fluctuated between strong Central control and local initiative, thus preventing an extremely centralized or decentralized administrative structure. Municipal administration was ‘in the hands of the kotwal or town governor, who also combined the duties of magistrate and police officer\textsuperscript{13}.

Another significant fact that stands out in India’s history is that the provinces and the local Governments in the various empires, from the Maurayas to the Mughals,
enjoyed considerable degree of autonomy. As noted by the historian Sir Jadunath Sarkar, in ancient empires” each province led its own life, continued its old familiar system of Government (though under the agents of the Central power) and used its local language”. Whenever an over-ambitious emperor attempted centralization by steam-rolling the local autonomy, it evoked strong resentment and reaction. Such extreme centralization proves not only detrimental to administrative efficiency, but, in counter-effect, weakened the capacity of the Central power to maintain its hold over sub-national forces on a stable and enduring basis. The last of the great Mughals made a strong bid for complete centralization and abolition of traditional diversities and autonomy of the regions. Soon after his death, the regional forces discharged the mantle of the Central authority. Governors of the Provinces and local chieftains asserted their independence and the entire structure crumbled\textsuperscript{14}.

The British also, at the commencement of their regime, tried to centralize all power. But they soon realized, especially after the traumatic consequences of Dalhousie’s policies, that it was not possible to administer so vast and diverse a country like India without progressive devolution or decentralization of powers to the Provinces and the local bodies\textsuperscript{15}.

The development of administrative institutions with a federal character in India start with the expansion of British rule after 1857, after the British Crown assented to take over the duties and treaty obligations of the East India Company and assumed direct responsibility for India’s ‘protected’ states. In 1858, Lord Canning was proclaimed the first Viceroy and Governor-General for the British Crown. It is during this period that the centralizing administrative aspects of British rule as set out by the Charter Act of 1833 were gradually reversed by the Indian Councils Act of 1861. The Charter Act of 1833, according to H.H. Dodwell, had centralized the administration of the country’s finances in the hands of the Government of India. However it negated the power of legislation from the governors in council\textsuperscript{16}.

\textsuperscript{14} Supra note 10.
\textsuperscript{15} Ibid.
\textsuperscript{16} Lawrence Saez, Federalism without a centre: The impact of political and economic reform on India’s federal system, p. 22 (2002).
Indian Councils Act of 1861 provided for participation by non-officials in the Legislative Council of the Governor-General. Similar provisions were made for the Legislative Councils of the Provinces. The Indian Councils Act of 1861 also established a Viceroy’s executive council composed of five members. The decentralized federal administrative structure outlined by the Act of 1861 was protean. No line of demarcation was drawn between subjects reserved for the Central and those allocated to the local legislature. Nevertheless, while local legislation in certain cases could not be undertaken without sanction from the Governor-General, all acts of local legislature required his subsequent assent as well as that of the local governor and were subject to disallowance by the Crown. The power of legislative councils was later solidified with the establishment of separate councils in Bengal, the North-western Provinces and the Punjab and Burma, as well as with the eventual creation of three separate district administrations of Bengal, Bombay and Madras.\(^\text{17}\)

It was during this time of institutional transformation that the Indian National Congress was founded in 1885. Although largely a forum for complacent Indian elites, the Indian National Congress eventually became the organizational vehicle for India’s mass nationalist movement. The Indian National Congress often issued resolutions to provide for a transformation of governance in British India. Though often ignored by the Viceroy and his government, such resolutions later served as the platforms for debates in India’s Constituent Assembly.\(^\text{18}\) The long-drawn out struggle for self-government by the Indian National Congress, joined by the other political parties formed later, led to the growth of Indian Nationalism. Modulating their strategy step by step with the mounting demands and persistent pressures of the nationalist movement, the British started devolving more and more powers to the Provinces, involving increasing association of Indians on the one hand and promoting divisive forces on the other.

\(^{17}\) Id. at p. 22-23

\(^{18}\) Id. at p. 23
An important factor, which helped and sustained the evaluation of a ‘dispersed’ political system in India, was the decentralization of finances. This process started with the Mayo Scheme in 1871 and continued till it was formalized by the Government of India Act, 1919\textsuperscript{19}. The Principle of indirect election to these Legislative Councils was established in 1892 and the functions were enlarged to include the right of discussion of the budget and interpellation in matters of public interest. By the The Indian Councils Act, 1909 (Morley Minto Reforms) the British further extended the association of Indians with the governance of the country but on the basis of separate electorates, narrow franchise and indirect election. The 1919 Montagu-Chelmsford Reforms eventually examined the working of the new legislative councils and attempted to accelerate the advent of a limited parliamentary system in India. From the Montagu-Chelmsford Reforms leading upto the Government of India Act of 1919, more powers were institutionalized to the provincial legislatures under a dyarchial system.

The Government of India Act, 1919\textsuperscript{20} ushered in the first phase of responsible Government in India. It was a significant step in the development of a two-tier polity. While conceding representative government in a small measure in the Provinces under a ‘dyarchial’ system, it demarcated the sphere of Provincial Government from that of the Centre. By the Devolution Rules framed under the Act, powers were delegated to the Provinces not only in the administrative but also in the legislative and financial spheres. Under the provisions of Government of India Act of 1919, separate Central and Provincial Lists demarcated some administrative and legislative jurisdictions in this two-tier federal system. The last item in the Provincial List allotted to the Provinces “any matter though falling within the Central subjects is declared by the Governor-General-in-council to be merely local or private nature within the province”. The subjects in the Provincial List were further sub-divided into ‘reserved’ ad ‘transferred’ subjects. The Departments dealing with the ‘transferred’ subjects were placed in the charge of elected ministers responsible to the Provincial Legislature, while Departments in

\begin{footnote}
\textsuperscript{19} Supra note 10.
\textsuperscript{20} The Montagu-Chemsford Report led to this enactment.
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respect of “reserved” subjects were administered by the Governor with the assistance of an Executive Council nominated by him. Although with respect to transferred subjects, the Provinces derived substantial authority by devolution from the Central Government, yet the Governor-General-in-council remained in control at the apex of this centralized system, ultimately responsible to the Secretary of State for India in the U.K. There was also a third List regarding taxation powers of local bodies.

The reforms of 1919 failed to meet the aspirations of the people for full responsible government. In reality, the structure remained unitary with the Governor-General-in-council in effective ultimate control. Finance was a ‘reserved subject’ in charge of a member of the Executive Council and no progressive measures could be put through without his consent. The main instruments of administration, namely, the Indian Civil Service and Indian Police were under the control of the Secretary of State and were responsible to him and not to the ministers. The Governor could act in his discretion otherwise than on the advice of the Ministers. No Bill could be moved in a Provincial Legislature without the permission of the Governor-General. No Bill could become law without his assent.

The intense India-wide agitation carried on by the political parties for full responsible government, evoked a partial response from the British Government. In November 1927, they appointed a Statutory Commission under Sir John Simon for considering the grant of a further instalment of responsible Government. All the seven members of the Commission were British. The Indian National Congress and all other leading political parties boycotted the Commission. The Congress pressed the British Government to accede to the national demand for convening a Round Table Conference or Constituent Assembly to determine the future Constitution of India.

The partial devolution of political power to the Indian provinces and the continuing

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21 Supra note 10.
22 Ibid.
23 Ibid.
trend towards decentralization was later developed in the Government of India Act of 1935 preceded by publishing of a white paper in 1933, embodying the principles of constitutional reforms in India. This interalia, sought to extend the separate electorates future to Scheduled Castes and Tribes, which had to be withdrawn after a protest “fast unto death” by Mahatma Gandhi. The Joint Select Commission of the Select Commission Reports considered these proposals; and a bill was drafted and enacted in 1935 as the Government of India Act.

The Government of India Act, 1935 was divided into three parts that involved the structure of the Central government, the extent of provincial autonomy, and the provinces and the Paramount Power. The Act reorganized the legislative machinery at the Centre. The legislature was divided into an Upper and Lower House. The Viceroy’s Executive Council comprised of ministers appointed by the Governor-General from the members of the Lower House. The Federal subjects were classified into ‘reserved subjects’ and ‘transferred subjects’. The Governor General administered the ‘reserved subjects’ with the assistance of Councilors and the ‘transferred’ subjects with the aid of Council of Ministers responsible to the Central Legislature. Wide discretionary powers were given to the Governor-General to include, in his discretion, in his Council Of Ministers representatives of the minorities and the Indian States.

The Government of India Act of 1935 introduced an important federal element in that it established a twofold system of government with the Centre and the States functioning separately. The administration of the States was autonomous, to a certain extent, and the financial resources separate from those of the Centre. Finally, the Act also outlined the emergency provisions regarding emergency powers, stating that in the event of a collapse of administration in any State, the governor would take tasks of administration. Overall, the Act established a twofold system of government with the Centre and the States being assigned different (and

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24 Supra note 16 at p. 24
25 Id. at p.25
overlapping) functions, under the ultimate control of the Governor-General-in-Council. The Act described the administrative machinery in terms of legislative and executive powers and the responsibilities of the Governor-General and other appointed and elected officials. It also provided a bicameral federal parliament that never came into being due to the reluctance of the princely States to join up.

The Government of India Act, 1935 is however a vital landmark in the history of constitutional decentralization of power particularly from two standpoints. Firstly, it dispersed constitutionally powers between the Centre and Provinces. Secondly, subject to certain safeguard, it introduced representative government at the Provincial level responsible to the Provincial Legislature. But The Act failed to satiate India’s nationalist commitment. In the midst of World War II, the demand for the creation of Constituent Assembly and the reworking of its federal structure was reiterated in a number of Congress Party and All-India Muslim League resolutions. For instance, the Nehru Committee Report recommended a federal structure of government. Until 1946, several proposals failed including one by Sir Richard Stafford Cripps, when the British Prime Minister, on May 16, 1946 announced the British Cabinet Mission Plan by Mr. Atlee, which envisaged a Central Government with very limited powers and relatively strong provinces having considerable degree of autonomy with all its residuary powers. The leaders of the Congress Party and the Muslim League hesitantly accepted the general provisions of the Cabinet Mission Plan while an interim government was being formed. However, as relations between the Muslim League and the Congress deteriorated, they began to differ on the details of the composition and purpose of the assembly. The Congress and the Muslim League eventually rejected the tenets of the Cabinet Mission Plan but the failure of the Plan did not prevent the formation of the Constituent Assembly in December 1946.

(1) THE DEMAND FOR CENTRALIZATION IN THE CONSTITUENT ASSEMBLY

The first report by the constituent assembly initially envisioned a relatively weak Centre as advocated by the Cripps and the Cabinet Mission Plans. However, it was
done to integrate and accommodate the Muslim League. The constituent Assembly adopted a more unitary version of federalism after the passing of the India Independence Act and the eventual partition. The Constituent Assembly eventually embraced a more unitary version than that laid out by the British in the Government of India Act of 1935. The British had established a highly decentralized federal structure, partly to compensate for potential communal problems that could arise in a highly centralized system\textsuperscript{26}.

The Congress party itself was torn between various approaches to the organizations of federal institutions in India. Mahatma Gandhi had expressed a preference for a panchayat or village-based federation. His 1945 memorandum for a proposed decentralized federal system was handed over to the Constitution Committee of the Congress\textsuperscript{27}. Gandhi’s plan for radical decentralization came to a head with what were perceived to be the imperatives for centralization following Partition. Dr. Ambedkar ridiculed the arguments for the creation of a new constitution, raised upon village panchayats on a highly decentralized confederation of villages\textsuperscript{28}.

The gradual shift between the early committee reports of the Constituent Assembly and the eventual Constitution derived from the ever-changing debates about sovereignty in the Constituent Assembly. These changes proved frustrating to some members of the Constituent Assembly. Lakshmi Kant Mishra Said that the Constituent Assembly had been seized by the philosophy of Heraclitus—A policy of perpetual flux; and that he finds constant change not only in the views of the Drafting Committee, but also in the opinion of the members of the House.

\section{2) INDIAN UNION: IT’S NATURE}

The Constituent Assembly addressed itself to the task of devising a Union with a strong Centre. This task was beset with many difficulties. They had to bring into the Union not only the British Indian Provinces, but also the Princely States and the remote inaccessible Tribal Areas. They eventually settled for a Parliamentary or

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\textsuperscript{26} Id. at p.26. \\
\textsuperscript{27} Id. at p.27. \\
\textsuperscript{28} Id. at p.28.
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Cabinet form of Government ate the Union as well as the constituent units. The President and the Governors were envisaged as *de jure* heads of the respective Governments acting on the advice of the Council of Ministers, which comprised the *de facto* executive. The Constituent Assembly adopted the Constitution of India Act on 16 November 1949. The Constitution of India was eventually inaugurated on 26 January 1950. The Indian Constitution established its federal principles. It allotted federal and State responsibilities that are incorporated in the Lists in the Seventh Schedule of the Constitution. These lists are separately known as the Union and the State Lists. They were in parts identical to the Provincial and Central Lists established by the Government of India Act of 1935. However, an innovation of the newly formed Constitution featured the presence of a Concurrent List in the Seventh Schedule that provided the Centre and the States with a buffer between likely aspects of overlapping jurisdiction, particularly on such issues as criminal, commercial and educational matters.

(3) INDIAN UNION: ETERNAL AND INDESTRUCTIBLE

India is described as ‘Union of States by Article 1. The First Schedule to the Constitution specifies the States. Parliament may diminish the area of any State or change the boundaries, rename any State or admit any State. One of special aspects of the Indian Constitution is that the Union is indestructible but not so the States. The identity of the States can be changed or even obliterated. The Constituent Assembly rejected a motion in the concluding stages to designate India as a ‘Federation of States’. Dr. Ambedkar, Chairman of the Drafting Committee, while introducing the Draft Constitution, explained the position thus:-

“……that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the people of the country may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the
States have no right of secession and that their federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute”29.

C. MAIN FEATURES OF CENTRE-STATE RELATIONS

A federal State derives its existence from the Constitution, just as a corporation derives its existence from the grant by which it is created. The federal system of Government refers to the system of administration in which there is distribution of governmental powers between the Union and the States in terms of Constitutional provisions. The Constitution in a federal State constitutes the supreme law of the land. Prof. Wheare says that the supreme constitution is essential if Government is to be federal; the written constitution is essential if federal Government is to work well. A federal constitution must also necessarily be a written constitution. A natural corollary of a written constitution is its rigidity. A constitution which is the supreme law of the land must also be rigid. The Indian Constitution provides for a new kind of federalism to meet India’s peculiar needs. In the matter of distribution of powers, the Framers followed the pattern of the Government of India Act, 1935. The current trends emphasize cooperation and coordination, rather demarcation of powers, between different levels of government. The basic theme is interdependence in orchestrating the balance between autonomy of the States and the inner logic of the Union.

In firm consistency with their resolve to constitute a Federation with a Strong Centre, the framers of the Constitution made an elaborate distribution of governmental powers—legislative, administrative and financial—between the Union and the States. To make it strong, they gave weightage to the Union, allocating to it dominant and relatively larger powers.

The Union Legislature or Parliament has two houses, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Unlike in most federations,

29 VII CAD 43
representation in both is on the basis of population, through indirect election in the former and direct election in the latter. The Council of States has been given some special functions regarding matters effecting States, while the House of the People has been given some special role regarding financial matters. States have been given some flexibility about having bicameral or unicameral legislatures.

(1) DISTRIBUTION OF POWERS
The distribution of powers is an essential feature of federalism. The basis of such distribution or powers is that in matters of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to the Union, and matters of local concern remain with the States. The distribution of powers is as follows:-

a. Legislative Relations (Articles 245 to 255)
The VII Schedule to the Constitution divides the subjects of legislation under three lists viz, Union, State and Concurrent Lists.

Union List (List I) contains as many as 100 items and comprise of the subjects which affect the entire country and are of general interest and admit of uniform laws for the whole of the country. These matters lie within the exclusive legislative competence of the Union Parliament.

The State List (List II) enumerates 61 items and comprises of subjects of local or State interest and as such lie with in the legislative competence of the State Legislatures.

The Concurrent List (List III) enumerates 52 items, with respect to which, both Union Parliament and the State Legislature have concurrent power of legislation.

The Concurrent List expressed and illustrates vividly the underlying process of nation building in the setting of our heterogeneity and diversity. This is a category
of subjects of common interest which could not be allocated exclusively either to the States or the Union. Harmonious operation of the Concurrent List is very essential for the creative federalism at its best. The problems that have attracted attention in the field of Union-State relations have less to do with the structure or the rationale of the Concurrent List than with the manner in which the Union has exercised its powers\textsuperscript{30}.

It has been highlighted by the Report of the National Commission to Review the Working of the Constitution that institutional arrangements for facilitating exchange of views between the States and the Union on matters falling within the field of concurrent legislation leave something to be desired. This has happened in spite of the existence of the Inter-State Council under article 263. There is, however, no formal institutional structure that requires mandatory consultation between the Union and the States in the area of legislation under the Concurrent List which covers several items of crucial importance to national economy and security. The Concurrent List provides a fine balance between the need for uniformity in the national laws and creating a simultaneous jurisdiction for the States to accommodate the diversities and peculiarities of different regions. This also provides a distinguishing feature in the federal scheme envisaged by the framers of the Constitution. It is very much essential to institutionalize the process of consultation between the Union and the States on legislation under the Concurrent List\textsuperscript{31}.

The Constitution confers power on the Union Parliament to make laws with respect to the matters enumerated in the State List under special state of affairs\textsuperscript{32}. Besides, the Constitution vests power in the Union Government to control the exercise of legislative power by the State Legislature in certain matters\textsuperscript{33}. The residuary powers are vested in the Union Parliament\textsuperscript{34}.

\textsuperscript{31} Ibid.
\textsuperscript{32} Articles 249 to 253, 352, 353,356
\textsuperscript{33} Articles 200-201, 254(2), 304(b)
\textsuperscript{34} Article 248
b. Financial Relations (Articles 264 to 293)

The Indian Constitution incorporates a very convoluted scheme of Centre-State financial relations. There is a complete separation of taxing powers between the Centre and the States with a tax sharing between the two and the allocation of funds to the States. Without the authority of law, no tax can be levied. Division of financial powers and functions among different levels of the federal polity are asymmetrical, with a pronounced bias for revenue taxing powers at the Union level while the States carry the responsibility for subjects that affect the day to day life of the people entailing larger expenditure that can be met form their own resources. The residuary power of imposing tax, like the legislative power, is vested with the Centre. Another notable feature of the financial scheme is that it seeks to avoid the possibility of overlapping and multiple taxation\(^\text{35}\).

On an average, the revenue of States from their own resources suffices only for about 50 to 60 percent of States’ current expenditure. Foreseeing the insufficiency of the States’ fiscal resources at the time of framing the Constitution, a mechanism in the shape of Finance Commission has been provided under article 280 for financial transfers from the Union. Its function is to eliminate financial inequalities between the two layers of Government and the States \textit{inter se}, and to ensure orderly and judicious devolution that is deemed necessary from the point of view of avoiding vertical or horizontal imbalances\(^\text{36}\).

The Finance Commission is one stream of transfer of resources from the Union to the States and advises the President over the aforesaid matters every five years and then there is Planning Commission, which advises the Union Government regarding the desirable transfer of resources to the States over and above those recommended by the Finance Commission. Bulk of the transfer of revenue and capital resources from the Union to the States is determined largely on the advice of these two Commissions. By and large, such transfers are formula-based. Then there are some

\(^{36}\) \textit{Supra} Note 30
discretionary transfers as well to meet the exigencies of specific situations in individual States. Imbalances have become endemic during the last two decades and have assumed alarming proportions recently. For this state of affairs, the constitutional provisions can hardly be blamed. Broadly, the causes have to be sought in the working of the political institutions. There are shortcomings in the transfer system. For example, the ‘gap-filling’ approach adopted by the Finance Commission and the soft budget constraints have provided perverse incentives.

c. Administrative Relations (Articles 256 to 263)

The Constitution embodies provisions for meeting all types of eventualities resulting from the working of the federal systems and also for protecting and maintaining peace and order in the country, to ensure smooth and proper functioning of the administrative machinery at the two levels.

The Scheme of allocating the administrative tasks is drawn for the purpose of:

(i) the administration of laws;
(ii) achieving co-ordination between the Centre and the States;
(iii) the Settlement of disputes between the Centre and the States and between the States Inter se;
(iv) for the purposes of Article 355.

The Constitution divides the executive power also like the distribution of legislative powers between the Union and the States. The executive power of both the Governments has been declared co-extensive, subject to few exceptions.

Article 73 says that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. It extends to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. However, with respect to concurrent

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37 Ibid.
38 Supra note 33 at p.493.
matters, the Union shall exercise executive power only if (a) the constitution so expressly provides or (b) any law made by Parliament so confers the powers expressly on the Centre\textsuperscript{40}.

Article 162 lays down that the executive power of a State extends to the matters with respect to which the legislature of the State has power to make laws. In respect of concurrent matters, the States shall have the executive power only if the Constitution or a parliamentary law has not conferred such power expressly on the Union\textsuperscript{41}.

(2) CENTRE-STATE CO-ORDINATION
The Constitution has adopted the following techniques of co-ordination between the Centre and the States—

(a) Inter-governmental delegation of administrative powers [Article 258];
(b) Centre’s directions to the States [Articles 256 & 257];
(c) All India Services [Article 312];
(d) Inter-State Council [Article 263]\textsuperscript{42}.

(3) DOMINANCE OF UNION LEGISLATIVE POWER
The legislative power of the States must yield to that of the Union, where there is irreconcilable conflict of overlapping with respect to a matter as between the three Lists of the Seventh Schedule [Non-obstante clauses in Article 246(2)]. Article 254(1) says that where a law made by a State legislature is repugnant to any matter enumerated in the Concurrent List, it shall be void to the extent of repugnancy. If such a State law was kept for consideration of the President and it has received his assent, it shall remain operative [clause (2) of Article 254]. All the same, Parliament may modify or rescind such State law not withstanding the President’s concur.

\textsuperscript{40} Supra note 35 at p.494.
\textsuperscript{41} Ibid.
\textsuperscript{42} Ibid.
(4) ALLOCATION OF UNION FUNCTIONS TO THE STATES AND VICE VERSA (ARTICLE 258)

Article 258(1) says the President can entrust with the consent of the Government of a State to that Government or its officers notwithstanding anything in the Constitution, functions in relation to any matter to which the executive power of the Union extends. Parliament under Article 258(2) can confer powers and impose duties on a State Government or its officers and authorities, notwithstanding that it relates to a matter with respect to which the legislature of the State has no power to make laws. The consent of the State Government is not a condition precedent for exercise of the power under this clause. Article 258A provides for entrustment, by a State, of functions in relation to any matter in respect of which the executive power of the State extends with the consent of the Government of India to the latter or its officers.

(5) CONTROL OF THE UNION EXECUTIVE OVER STATE LEGISLATION (ARTICLES 200,201)

This is another special feature of the Constitution. According to Article 200, a bill passed by a State legislature shall be presented to the Governor who may assent, withhold his assent or return the same for reconsideration by the Legislature. However if it is again passed by the State Legislature with or without amendment, he shall not withhold his assent. The Governor may also reserve the Bill for consideration of the President (in effect the Union Council of Ministers) who may in turn signify his assent, withhold the same or return it for re-consideration. However, in contrast to the position of Governor, the President need not give hid assent when such a Bill is returned with or without amendment after reconsideration by the Legislature of the State (Article 201). There are special provisions also, some of which require certain type of State Bills fort certain purpose to be reserved for the consideration of the President.

43 Supra note 10.
44 Ibid.
Federalism is not a static model. It is a changing concept. The traditional theory of federation, which envisaged two parallel Governments of synchronize jurisdiction, operating in seclusion from each other in water-tight compartments, is nowhere a functional reality now. With the surfacing of the Social Welfare State, the conventional hypothesis of federalism completely lost its ground. By the middle of the twentieth century, federalism had come to be understood as a dynamic process of co-operation and mutual action between two or more levels of government, with increasing inter-dependence and Centrist trends. The framers of the Constitution has taken note of these and incorporated in the provisions of the Constitution\textsuperscript{45}.

Apart from the category of subjects of common interest i.e. Concurrent List, Several entries in the Union List are expressly interwined with certain items in the State List. These entries have been so designated that Parliament may, by making a declaration by law of public interest or national importance, assume to the extent so declared, jurisdiction to legislate on the connected matters in the State List. Examples of matters in this category are provided by entries 7, 23, 24, 27, 32, 52-56, 62-64, and 67 of the Union List. Such entries having an interface with the State List, in a way, disclose another field of ‘overlapping’ responsibility. Overlap as between the Lists may also occur when aspects of the same subject are put in more than one List. For example, different aspects of ‘Trade and commerce’ find mention in all the three Lists; namely, Entries 41 and 42 in List I, Entry 26 in List II and Entry 33 in List III. From certain matters, in List II a portion has been carved out and specially put in List I. Entries 13 and 32 of List II and Entries 22, 43, 44 and 91 of List I are instances of inter-linked matters cutting across inter-List Boundaries. These criss-cross patterns of the Entries in the Lists include not only flexibility in the division of powers but also postulate co-operation between with Union and the States in the working. There are inbuilt techniques, \textit{inter alia}, in Articles 246 and 254 for resolving conflict and ensuring harmony and co-operation between the Union and the States in the exercise of their Legislative powers in areas of over-

\textsuperscript{45} Ibid.
lapping jurisdiction⁴⁶.

(7) CO-ORDINATION FORUMS

Article 263 of the Constitution provides forums for resolving issues and ensuring co-ordination of policy and action in the exercise of governmental functions by the Union and States. It enables the President to establish an inter-State Council for enquiring into and advising upon disputes between States and for investigating and discussing subjects and one or more of the States have common interest and to make recommendations upon any such subject, particularly for better co-ordination of policy and action with respect to such subjects.

Article 307 provides for appointment of an authority for carrying out the purposes in the area of inter-State trade and commerce. Article 262 further enables Parliament to provide for the adjudication of disputes relating to waters of inter-State rivers or river valleys. Inter-State River Water Disputes Act, 1956 provides for the constitution of Tribunals for adjudication of such disputes.

(8) ROLE OF THE JUDICIARY

The Constitution of India had in the interest of the nation continued the system of a single integrated judiciary for the Union and the States, although it empowers Parliament to establish separate courts for the enforcement of Union Laws. The role and structure of the Judiciary also institutionalize the idea of co-operative federalism. At the Apex of the combined judicial system, there is Supreme Court. Article 131 confers exclusive original jurisdiction on the Supreme Court to decide suits between the Union and the States and the States inter se. Judges of the Supreme Court are appointed by the President (in effect, the Union Government) after consultation with the Chief Justice of India and such Judges of the Supreme Court and the High Courts as the President may deem necessary. For every State or a group of States and a Union Territory, there is a High Court.

⁴⁶ Ibid.
The Constitution authorizes the Courts to review and pronounce upon the Constitutional vires of the legislative and executive actions of the Union and the States. Judiciary in India, as in most federations, acts as one of the guardians of the Constitution. As a Constitutional interpreter, the courts in the older federations have played significant role in balancing the claims of the federal power and the rights of the constituent units, but generally with weightage in favour of the former. In India, the comprehensive nature of the Constitution, the detailed enumeration of the powers of the Union and the States and the comprehensive ease with which the Constitution can be amended, limit the scope of bringing about, through judicial interpretation, any substantial alteration in the balance of Union-State Relations. A review of the Judgments dealing with the Centre-State Relations directly would show that most them have upheld the primacy of the Union vis-à-vis the States. The silent premise dominating the process of adjudication of Union-State disputes in these cases had been the need for a strong and United India.\(^{47}\)

(9) **EMERGENCY PROVISIONS**

The Constitution provides for proclamation by the President of a grave emergency whereby the security of India is threatened by war or external aggression or armed rebellion (Article 352). When such a Proclamation is in operation, the Union may assume for its organs all the legislative and executive of the State. Consent of the State Government is not a condition precedent to such assumption (Article 353). A Proclamation of Emergency has the effect of converting the State List into Concurrent List; and therefore, if Parliament legislates on any subject in the State List, the State Laws, to the extent of repugnancy, shall be null and void and the Law made by the Parliament shall prevail. The executive powers of the State also become subject to the Direction of the Union as to the manner in which threes powers are to be exercised.

Article 355 further is another important feature of the Constitution. It casts a duty on the Union to:

1. protect every State against external aggression, and internal disturbance;
2. ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

By virtue of Article 356, the President may by Proclamation assume to himself all or any of the functions of the State Government or all or any of the powers vested in or exercisable by the Governor or any authority in the State if he on receipt of a report from the Governor of State, or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. He may also declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. The purpose of Union intervention under this Article is to remedy a break-down of the Constitutional machinery in a State and to restore its functioning in accordance with the Constitution.

Article 360 of the Constitution provides for yet another type of emergency namely Financial Emergency. If the President is satisfied that situation has arisen where by the financial stability of India or any part of its territory is threatened, he may proclaim a Financial emergency. When such an emergency is in operation, the executive authority of the Union extends to the giving of directions to any State for the purpose of securing observance of canons of financial propriety.

D. FUNCTIONAL TRENDS IN CENTRE-STATE RELATIONS IN INDIA

The last 60 years of the working of Centre-State relations has witnessed continuous expansion of the responsibilities of national government. The extension of the role of the Union in the State field has come about as a result of the legislative and executive action of the Union.

The Union has through the exercise of its dominant legislative power taken over
functions which normally were left to the States. Acts passed by the Parliament by virtue of Entries 52 and 54 of the Union List are typical examples. Centralized Planning through the Planning Commission is a conspicuous example of how, through an executive process, the role of the Union has extended into areas, such as agriculture, fisheries, soil and water conservation, minor irrigation, area development, rural reconstruction and housing etc. which lie within the exclusive State field. The Constitution envisages that fiscal resources would be transferred to the States on the recommendation of the Finance Commission. But, in practice, the role of the Finance Commission has come to be limited to channelising of revenue transfers (including a very small capital component) only. The capital resources (including a revenue component) for planned development, are now transferred on the recommendation of the Planning Commission.

The National Development Council, set up in 1952 by a resolution of the Union Government, is supposed to be the highest deliberative body in the field of Planning which oversee the working of the Plans from time to time, to consider important questions of social-economic policy affecting national development and to recommend measures for implementing the aims and targets set out for the National Plans. Its Chairman is the Prime Minister and includes the members of the Planning Commission and the Chief Ministers of all the States.

1) SOCIO-ECONOMIC CHANGES & ITS IMPACT

There has been a revolutionary advance in science and technology, when the constitution came into effect since 1950. The world has entered the nuclear as well as space age. Planes now travel several times the speed of sound. Anything happening in one place can be easily perceived in all parts of the world through satellite communications and television. Another dimension which has been added to the world scenario is the rapidly increasing population with its concomitant problems. Old people are yielding place to new. As a result of the changing
attitudes, thinking and expectations of the people from a welfare State, there is hardly any walk of life that remains untouched by the activities of government. The functional methodology of federal systems, world over, has also been undergoing change with this changing environment. The centralizing trends which were just discernible when the Indian Constitution was on the anvil are now manifest realities of gigantic proportions in most federations\textsuperscript{48}.

The role of the national government in all countries having a two-tier polity has hugely stretched owing to the inevitable pressures of various hypothetical, theoretical, scientific, industrial, demographic and other factors. The functioning of their system has increasingly become a co-operative process of shared responsibilities.

The last about 60 years have seen many changes in the socio-economic and political fields. India was just emerging from the colonial past, after the Constitution came into existence in 1950, allowing very little mobility. The old feudal system was still very much in existence. No doubt, during this period, the Zamindari system has been abolished, tenancy reform has been largely implemented and land ceiling laws have been applied with varying degrees of success. Yet, much more remains to be done.

An affluent community of gentlemen farmers has grown due to economic development forming part of the rural elite and the landless laborer continues to struggle you maintain his place at the periphery. A new class of entrepreneurs, many of them immigrants, has emerged, who by hard work and perseverance have established many a successful enterprise. Highly sophisticated industries all over the country have also been put up by large business houses. Pace of Urbanization and the steep rise in population in the entire hierarchical structure of urban conglomerates staring with metropolitan cities to small municipalities has been another important feature.

The most outstanding achievement during this period has perhaps been the free-flow of inter-State trade and commerce. Massive investments in socio-economic

\textsuperscript{48} Supra note 10.
development under Central guidance have also contributed very largely to the strength of the nation, but with large regional variations.

**2) POLITICAL CHANGES & ITS IMPACT**

The political scene over the last six decades has undergone a sea change with other aspects of life. The Congress party occupied a predominant position in national life after the independence. The old freedom fighter who had come from the legal, medical and academic professions were the persons who were in the rank and file of this party having good education, patterned mainly on the English system and values. The Congress Party formed the government at the Centre and in the States for nearly two decades after independence. Differences between the State Governments and the Union Governments were quite easily sorted out at the party level, being essentially an intra-party arrangement.

The composition of the Congress Party underwent a change particularly in the States as the old guard of the pre-independence days began to vanish from the political scene by sheer afflux of time. There has been a huge transformation in the India’s party system. There has been the fragmentation of the Congress Party both at the national and the State level. This transformation in India’s party system developed from a single-party dominant to a multiparty system of governance that includes state (or regional parties). The trend in this transformation began in 1989 with V.P. Singh’s Janta Dal coalition government. This trend has been followed in 1996(United Front Government), 1998 and 1999(BJP-led coalition) and now Congress-led coalition in 2004. A large number of splinter groups with shifting loyalties and narrow interests have been thrown up rather than large-sized political parties with healthy traditions and broad outlook, which could shoulder heavy responsibility if occasion arose. This has tended to encourage irresponsible political behaviour. Those in power at the national level have been obliged to use diverse strategies and tactics, which were not always sound from long-term interests, in order to maintain their hold on the State-level forces. Selection of candidates have
largely been on the basis of the communal and caste grounds\textsuperscript{49}.

(3) EMERGING ISSUES IN UNION AND STATE RELATIONS

Over the Period of time, debates have been there about the basic structure of Constitution. Differing views are there. Some say it is sound and should not be tampered with. On the other side, there are some who are of the view that it requires drastic alteration so as to bring it in accord with their own perception of an ideal federal system.

There has been a perception that the Union has occupied most of the concurrent field leaving little to the states, and by indiscriminately making declarations of public interest or national importance, taken over excessive area of the linked entries in the State fields at the expense of the State legislative power.

The institution of Governor has been alleged to have been made use of to destabilize the State Governments run by parties different from that in power in the Union, to facilitate imposition of the President’s rule and reserve for President’s consideration many Bills to thwart the State legislative process.

It has been complained that the resources of the States have not grown at a rate commensurate with the growth in their responsibilities. Another issue raised is that the emergence of planned development has concentrated all power in the hands of the Union, with the Planning Commission acting as a limb of the Union Government. The system of controls, licenses and permits which had its origin darting the Second World War, has proliferated greatly to subserve the requirements of a planned regime\textsuperscript{50}.

It is urged that in matters of dispute between the Union Government and a State Government, the former should not be both the disputant and the Judge but should get the case examined by an independent assessor before taking a decision. The basic thrust of these and other criticisms is that while the union-State relations were

\textsuperscript{49} Ibid.

\textsuperscript{50} Ibid
interned to be worked on the basis of Co-operative federalism and consensus in all areas of common interest, they have not been so worked and the forums envisaged by the Constitution for that purpose have not been established.

The thesis will be divided into six chapters, each dealing with a different facet of the developing changes in federalism in India. The functional aspect of the Centre-State relations has been studied as to how in past Indian federalism has worked and in the light of the past experience, how the evolution of Center-State arrangements has taken place. The historical roots of this contestation for sovereignty have been examined.

In the thesis, the role that the Government of India Act of 1935 played in the eventual federal set-up after India’s independence has been highlighted. The features of the administrative federal character that emerged in the aftermath of the Constituent Assembly debates have also been examined. The internal debates about centralization in the Constituent Assembly served as a reference point for the various approaches to the restructuring of federalism that emerged in the late 1960s and that prevailed throughout the 1980s and thereafter\(^{51}\).

As India constitutes an illuminating test for combining democracy with development and the idea and practice of a multinational State in an era of subnational conflicts and civil wars, the emphasis of the courts of law and the Government has been to keep a balancing approach towards the Centre-State relations, which is very much essential to have harmonious all-round development of the country and to have stiff resistance to external threats, if any.

The study has included India’s political reform as an important factor in transforming federalism. This transformation in India’s party system developed from a single-party dominant to a multiparty system of governance that includes State (or regional parties). The trend in this transformation began in 1989 with V.P. Singh’s Janta Dal coalition government. This trend has been followed in 1996(United Front Government), 1998 and 1999(BJP-led coalition) and now

\(^{51}\) *Supra* note 16 at p. 21
Congress-led coalition in 2004 and then again in 2009.

Regarding institutional restructuring of Centre-State ties in the light of Sarkaria Commission recommendations, it is reported that the authorities have considered 190 recommendations out of 247 and accepted 155 with or without modifications. The numbers may sound big but they are trivia. On the crucial and most contentious issue of repeal of Article 356, the fiery federalists of yesterday who have turned into 'cooperative federalists' today and the much-mellowed State autonomists are at loggerheads among themselves.52

Those groups that have advocated greater decentralization of India’s federal system have paradoxically called for inter-governmental instruments of governance, whereas those who have advocated cooperative federalism have discounted the need for additional inter-governmental institutions.53 The viability of federal democracy in India may need to depend on the creation of a system of Centre-State relations that does not reinforce existing inter-governmental friction.

Economic liberalization has been identified as a factor in the transformation of federal relations in India. One of the traits of economic liberalization in India has been the acceptance of the basic tenets of economic liberalization by most political sectors. One of the unforeseen consequences of economic liberalization has been its dramatic impact on Centre-State relations.

As a result of the impact of economic reform, federal relations in India are gradually being transformed from inter-governmental cooperation between the Central government and the States towards inter-jurisdictional competition between the States. One of the unexplored areas of economic liberalization has been its impact on regulatory bodies.

Given the magnified leverage of regional parties in a multiparty system of governance, any Central government regulatory role will require the consent of the States. In a federal system that features growing inter-jurisdictional competition

52 www.pd.cpim.org
53 Supra note 16 at p. 40
among the States, it is unlikely that States would acquiesce to regulations that may jeopardize a foreign investor’s decision to invest in a given State.\footnote{Id. at p. 15, 16, 17.}