CHAPTER 8

UNION – STATE RELATIONS

CONTENTS

C. Trade, Commerce and Intercourse

- **Barriers to Inter-State Trade and Commerce**

8.7 - **Trade and Commerce Commission**

8.8

D. Resolution of Disputes

8.9 - **Inter-State Disputes**

8.10 - **Inter-State Water Disputes**

8.11 - **Inter-State Water Disputes Act**

8.12 - **Inter-State Council**

8.13 - **Treaty Making**

E. Executive

8.14 - **Office of Governor**

8.14.4 - **Assent of the President and Governors**

8.15 - **Failure of Constitutional Machinery**

8.16 - **Use-misuse of article 356**

8.17 - **Sarkaria Commission**

8.18. - **Should Article 356 be Deleted?**

8.19 - **Need for Conventions**

8.20 - **Situation of Political breakdown**

8.21 - **Constitutional Amendments**

8.22 - **Dissolution of Assembly**

8.23 ➢ Miscellaneous Matters

CHAPTER 8

UNION-STATE RELATIONS

1

Background

8.1.1 The Constitution in its very first article describes India as a Union of States. When the British power was established in India it was highly centralized and unitary. To hold India under its imperial authority, the British had to control it from the Centre and ensure that power remained centralized in their hands. A strong central authority was for the British both an imperial and an administrative necessity. The country continued to be ruled under the 1919 Act by a central authority until 1947. And, since under the 1919 Act, there was a central government, a central legislature, a system of central laws etc., the use of these terms continued under the colonial hangover.

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1 See also the Consultation Papers released by the Commission on "Constitutional Mechanisms for Settlement of Inter-state Disputes", "Treaty Making Power under our Constitution", "Institution of Governor under the Constitution" and "Article 356 of the Constitution" in Volume II (Book 2) of the report and the Background Papers on "Concurrent Powers of Legislation under List III of the Seventh Schedule", "Barriers to Inter-State Trade and Commerce" and "Article 262 and Inter-State Disputes Relating to Water" in Volume II (Book 3)

8.1.2 In the Constituent Assembly, the Drafting Committee decided in favour of describing India as a Union, although its Constitution might be federal in structure. Moving the Draft Constitution for the consideration of the Constituent Assembly on 4 November 1948, Ambedkar explained the significance of the use of the expression "Union" instead of the expression "Federation". He said "…what is important is that the use of the word 'Union' is deliberate… Though the country and the people 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." Finally, when the Constitution was adopted on 26 November 1949, it provided for India being a Union of States and its States and territories being as specified in the First Schedule. The Schedule specified four types of units - Parts 'A', 'B' and 'C' States and Part 'D' territories.

8.1.3 During the last half-a-century, many structural changes have been made and the map of the Union of States reshaped. Categorisation of States has disappeared, names of several territorial units called States have vanished, many new States have been formed on linguistic and other criteria, boundaries, areas, names etc. of some States have been altered and many relationships have been transformed. As at present, the Union consists of 28 States and seven Union Territories. Some unique solutions of regional councils, development boards, etc., have been attempted with varying degrees of success. The three newest States are Uttaranchal, Jharkhand and Chhatisgarh.

8.1.4 It is a tribute to the farsightedness of the makers of the Constitution that all these changes could be brought about largely peacefully and entirely within the four-walls of the Constitution. The predominant concern of the founding fathers as also of the various Commissions and Committees appointed since Independence to consider reorganisation of States or Union-State Relations - the JVP Committee, the Dar

Commission, the States Reorganisation Commission (SRC), the Rajamannar Committee, the Sarkaria Commission, etc. - has been that of the unity and integrity of India. We are still engaged in the stupendous task of national integration which is also an admission of the hard reality of our nation and Union being still in the making. The SRC report concluded:

> It is the Union of India which is the basis of our nationality…States are but limbs of the Union, and while we recognize that the limbs must be healthy and strong…it is the strength and stability of the Union and its capacity to develop and evolve that should be governing consideration of all changes in the country.

8.1.5 The Commission feels that there is no dichotomy between a strong Union and strong States. Both are needed. The relationship between the Union and the States is a relationship between the whole body and its parts. For the body being healthy it is necessary that its parts are strong. It is felt that the real source of many of our problems is the tendency of centralisation of powers and misuse of authority.

A - Legislation

Legislative Relations

8.2.1 The Constitution, based on the principle of federalism with a strong and indestructible Union, has a scheme of distribution of legislative powers designed to blend the imperatives of diversity with the drive of a common national endeavour. In this respect our constitutional theory as well as practice have kept pace with contemporary developments. The current trends emphasise cooperation and coordination, rather than

demarcation of powers, between different levels of government. The basic theme is inter-dependence in orchestrating the balance between autonomy of the States and the inner logic of the Union.

8.2.2 The Constitution adopts a three-fold distribution of legislative powers by placing them in any one of the three lists, namely I (Union List), II (State List) and III (Concurrent List). Articles 245 and 246 demarcate the legislative domain, subject to the controlling principle of the supremacy of the Union which is the basis of the entire system.

8.2.3 The Concurrent List gives power to two legislatures, Union as well as State, to legislate on the same subject. In case of conflict or inconsistency, the rule of repugnancy, as contained in article 254, comes into play to uphold the principle of Union power.

8.2.4 The Concurrent List expresses and illustrates vividly the underlying process of nation building in the setting of our heterogeneity and diversity. The framers of the Constitution recognised that there was a category of subjects of common interest which could not be allocated exclusively either to the States or the Union. Nonetheless, a broad uniformity of approach in legislative policy was essential to combine specific requirements of different States with the articulation of a common national policy objective. Conceived thus, harmonious operation of the Concurrent List could well be considered to be creative federalism at its best.

8.2.5 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. In a fundamental political sense, the passing of one party dominance that characterised the first four decades of the Republic has also ended the drive towards overcentralisation. Even the powers that unquestionably belong to the Union, for example the power to temporarily assume the functions of a State Government under article 356, are heavily circumscribed by the political reality of a multi-party system where the States have acquired significant bargaining power vis-à-vis the Government of India.

8.2.6 The evolving political system has thus imparted considerable vitality to the federal impulses of the Constitution. However, what has been gained in the actual practice of legislative relations between the Union and the States, in terms of restoring the balance inherent in the constitutional scheme, has not entered the realm of institutional validation. To this extent, the unilateralism of the Union in regard to the exercise of legislative powers under the Concurrent List remains a potential problem area. The principal critique of concurrency is not that it is not required, but that it is used without consultation, that it is not exercised to deepen inter-dependence and co-operation but to stress dominance of the Union point of view.

8.2.7 It has to be conceded 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. The Council has yet to develop into a mechanism to be relied on for an ongoing process of dialogue on vital socio-economic and political issues between the Union and the States and among the States. It is not as if such consultation is absent. There are Chief Ministers' Conferences on specific issues. There are State Ministers' Conferences on a variety of subjects on which common policy positions have to be formulated, such as Value Added Tax.

8.2.8 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. Even the National Development Council, whose ambit may occasionally be widened beyond the Five Year and the Annual Plans, is seldom convened to test ideas and evaluate experience in policy formulation and implementation in areas where both the Union and the States are interested for the sake of social and economic development.

8.2.9 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. This is further reinforced by placing a mode of altering the provisions in lists I,II and III in the 7th schedule among other matters of provisions substantive in nature and basic to the structure of the Constitution that fall within the purview of the proviso to clause (2) of Article 368. A bill for amending the list in the 7th schedule has to be passed by Parliament by a majority of the total membership of that House and by a majority of not less than 2/3rd of the members of the House present and voting – and followed by ratification of legislatures of not less than ½ of the States. This mechanism provides a statutory tilt in favour of consultation and cooperation with the States in matters pertaining to the Legislative sphere and inherent balance between flexibility and rigidity.

8.2.10 Globalization as a phenomenon has created a great deal of mobility of goods, services, capital, technology; integrating the world trade far more than ever before. There are also related concerns arising out of a need for a better and sustained use of resources of the earth as a planet that call for a much greater coordination in identification and formulation of responses among the nations. This process of cohesive and concurrent action needs to generate, first-of-all within the national context. The geographical climate, environmental, technological diversities amongst

States have to be harmonized in order that these may link with global processes for viable sustained, development and growth. A major field of undertaking new initiatives in these spheres would lie in the legislative domain where a certain concurrences and coherence between the States and their different needs have to be harmonized to evolve national policies. This is also reflected in issues that pertain to technology, trade, financial services etc. in the global context.

8.2.11 The Commission examined the constitutional provisions regarding concurrent powers of legislation, analysing the constitutional amendments that had been enacted from time to time and the judicial pronouncements on major issues arising from concurrency. The view that emerged was that there was no ground for change in the existing constitutional provisions.

8.2.12 The Commission believes that on the whole the framework of legislative relations between the Union and the States, contained in articles 245 to 254, has stood the test of time. In particular, the Concurrent List, List III in the Seventh Schedule under article 246 (2), has to be regarded as a valuable instrument for consolidating and furthering the principle of cooperative and creative federalism that has made a major contribution to nation building. The Commission is convinced that it is essential to institutionalise the process of consultation between the Union and the States on legislation under the Concurrent List.

8.2.13 **The Commission recommends that individual and collective consultation with the States should be undertaken through the Inter-State Council established under article 263 of the Constitution. Further, the Inter-State Council Order, 1990, issued by the President may clearly specify in 4(b) of the order the subjects that should form part of consultation in the Inter-State Council.**

Suggestion for a new entry in the Concurrent List – Management of Disasters and Emergencies, Natural or Man-made

8.2.14 **The Commission has examined a suggestion made by the Union Ministry of Agriculture that "Management of Disasters and Emergencies, Natural or Man-**

Made" be included in List III of the Seventh Schedule, and agrees to the suggested inclusion.

B - Finance

Financial Relations

8.3.1 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 than can be met from their own resources. On an average, the revenue of States from their own resources suffices only for about 50 to 60 percent of States' current expenditure. Since the insufficiency of the States' fiscal resources had been foreseen at the time of framing the Constitution, a mechanism in the shape of Finance Commission was provided under article 280 for financial transfers from the Union. Its function is to ensure orderly and judicious devolution that is deemed necessary from the point of view of avoiding vertical or horizontal imbalances.

8.3.2 The Finance Commission is only one stream of transfer of resources from the Union to the States. The Planning Commission 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 discretionary transfers as well to meet the exigencies of specific situations in individual States.

8.3.3 These institutional arrangements served the country well in the first three decades after independence. Testifying to the strength of these institutions neither the Union nor the States suffered from any large imbalance in their budgets, although the size of the public sector in terms of proportion of government expenditure to Gross Domestic Product had nearly doubled during this period.

8.3.4 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. The point, however, is that these deficiencies are capable of being corrected without any change in the Constitution.

Enlargement of the Scope of the Finance Commission

8.3.5 The institution of the Finance Commission has been one of the major success stories of the Constitution. The broad terms of reference as laid down in article 280(3) are unexceptionable. However, other matters in the interest of sound finance can also be referred to the Finance Commission. These would constitute additional terms of reference. It has been suggested that it would be desirable to associate the States more actively in deciding the additional terms of reference, preferably by having the National Development Council (comprising the Prime Minister and the Chief Ministers of States) to endorse the additional terms of reference. The Commission is not in favour of an amendment of article 280(3)(d) to enable such enlargement of the scope of the Finance Commission, However, it is recommended that

terms of reference of the Finance Commission should be broader and comprise of matters which would take care, in a comprehensive way, aspects of the financial relations between the Union and the States. The broadening of such terms of reference could also be discussed earlier by the National Development Council.

8.3.6 Under article 281, the recommendations of the Finance Commission are laid before the Houses of Parliament along with an explanatory memorandum as to the action taken on them. The recommendations are not theoretically binding, although there has been no case so far when the Government of India has deviated from recommendations of successive Finance Commissions. It has been suggested that the Constitution itself should describe the recommendations as an award binding on both the Union and the States. This has been urged in the context of the mechanism of the State Finance Commissions which are set up under articles 243-I and 243-Y which too make only recommendations and not awards. The State Finance Commissions are a comparatively new constitutional mechanism. They would take some time to strike roots in the constitutional soil. Politicians at the Sate level have also to find their bearings in the new landscape where the old landmarks of patronage at the State level have yielded place to a non-discriminatory passage of resources from the State exchequer to the local government institutions. Keeping in view the factors pointed out above the Commission does not consider it necessary to recommend the amendment of the Constitution to provide for the recommendations of either the Finance Commission constituted under article 280 or of the State Finance Commissions constituted under articles 243-I and 243-Y being treated as awards.

Share of States in taxes, cesses and surcharges

8.4. The Constitution was amended to provide a prescribed percentage of the revenue receipts to be transferred to States (article 270(2)). However, surcharges and cesses do not form part of the divisible pool. Cesses are intended for specific purposes and the States can have no complaint if the money is spent on predetermined purposes. Surcharges can be regarded as a not so thinly veiled device to deny the States their share in receipts from such surcharges. Keeping in view the complexity of the present national and international situation which has placed additional burden on the Union, the Commission would not recommend any constitutional amendment to make surcharges

shareable but would expect public policy to move decisively in the direction of doing away with the surcharges as part of the Union's fiscal armoury

Tax on services

8.5 In recent years, services have emerged as the dominant component in the gross domestic product (GDP). Yet there is no mention in the Constitution in any of the three lists (Union List, State List, Concurrent List) enabling any level of government to tax services. The Union has used the residuary power in the last entry of the Union List (entry 97) to levy taxes on selected services. The efforts have not succeeded in tapping the full potential of the service sector of a vast range of services which are primarily local in nature. It is necessary to enhance the revenue potential of the States in view of their major responsibilities for social and physical infrastructure. It might be worthwhile to provide explicitly for taxing power for the States in respect of certain specified services. For the Union also an explicit entry would be helpful, rather than leaving it to the residuary power of entry 97. However, it may be better to first let a consensus list of services to be taxed by the States come into force to be treated as the exclusive domain of the States, even if the formal taxing power is exercised by the Union. In other words, the golden rule here would be to hasten slowly. A *de facto* enumeration of services that can be taxed exclusively by the States should get priority from policy makers with a view to augmenting the resource pool of the States. **The Commission recommends specific enumeration of services that may become amenable to taxation by the States. This is necessary with a view to augmenting the resource pool of the States. The Commission recommends an appropriate amendment to the Constitution in this behalf to include certain taxes, now levied and collected by the Union, to be enabled to be levied and collected by the States.** Illustratively a list of such subjects in respect of which service tax is levied under the relevant section of the Finance Act, 1994 (Act 32 of 1994) as amended from time to time is given below:

(1) Section 65(48)(e): "To a client, by an advertising agency in relation to advertisements in any manner". Corresponding Entry in List-II of the Constitution – Entry 55 – "Taxes on advertisements published in the newspapers [and advertisements broadcast by radio or television]"

(2) Section 65(48)(f) – "to a customer, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles". Corresponding Entry in List-II of the Constitution – Entry 56 – "Taxes on goods and passengers carried by road or on inland waterways".

(3) Section 65(48)(m) – "to a client, by a mandap keeper in relation to the use of a mandap in any manner including the facilities provided to the client in relation to such use and also services, if any, rendered as a caterer". Corresponding Entry in List-II of the Constitution – Entry 49 – "Taxes on lands and buildings"

(4) Section 65(48)(o) – "to any person, by a rent-a-cab scheme operator in relation to the renting of a cab" Corresponding Entry in List-II of the Constitution – Entry 57 – "Taxes on vehicles, whether mechanically propelled or not; suitable for use of roads, including tram-cars subject to the provisions of Entry 35 of List III.

(5) Section 65(48)(za) – "to any person, by a mechanized slaughter house in relation to the slaughtering of bovine animals."

Status of Central Bank

8.6 A question has been raised whether any constitutional or legislative safeguards are needed to uphold the autonomy of the Reserve Bank of India (Entry 38, List I) in conducting monetary policy. An advisory group set up by the Reserve Bank of India (RBI) has recommended that legislative changes should be made to facilitate the emergence of an independent and effective monetary policy. However, the Commission sees no need for a change in the Constitution to specifically provide for independent conduct of monetary policy. The existing legislation has broadly succeeded in maintaining a suitable environment of security and continuity for the key personnel and of the autonomy of decision making by the top management. The Commission agrees that appropriate legislative changes would suffice for the proper and timely development of money, securities and exchange markets.

C - Trade, Commerce and Intercourse

Barriers to Inter-State Trade and Commerce

8.7.1 Free flow of trade without geographical barriers is *sine-qua-non* for economic prosperity nationally as well as internationally. Therefore, progressive removal of such barriers has been a general phenomenon in social evolution in the modern world. Today we are vigorously pursuing the goal of free flow of trade among the nations of the world under the banner of globalisation

through, for example, the WTO among the nations of the world. Regionally, member states of the European Community, for example, have already achieved that goal almost fully.

8.7.2 As economy is the most important source of power and identity in the world of today, the nations or regions that constitute the federation do not want to lose their hold on economic power. Nor do the economically strong States want the economically weak States to become parasites on them. Therefore, an arrangement must be devised which will ensure free flow of trade, encourage fair competition and simultaneously remain capable of discouraging and regulating unfair trade practices.

8.7.3 One common arrangement found in all federations in this regard, is the division between the interstate and intrastate trade and commerce. While the regulation of the former is assigned to the federal authority, the States retain the regulation of the latter. Some federations have gone further and made interstate trade free from regulation both by the federal authority as well as the authority of the States. Australia is the foremost example of that. India goes one step further than Australia in so far as it makes flow of interstate as well as intrastate trade free from regulation by the Union as well as the States. However, unlike Australia, after making such a general declaration, the Constitution of India gives adequate powers to the Union and the States, particularly to the former, to regulate trade and commerce.

Trade and Commerce Commission

8.8.1 In order that the country's competitiveness in trade, commerce and industry is enabled to respond to the increasing pressures of globalisation, it is necessary that barriers to Interstate trade and commerce, particularly, the free movement of goods on the inter-state routes should be progressively reduced with a view to their final elimination. A statutory authority contemplated under article 307 of the Constitution

requires to be set-up. As the effects of such an authority could as well go beyond the purposes of article-307, the legislation could be comprehensive drawing on Entry 42 of List -I and, if necessary, Entry 97 of List-I of the Seventh Schedule. The composition of the authority may provide for representation of the FICCI, CII, Railway Board, FSIME (Federation of Small Industries and Micro Enterprises), Indian Society of Automobile Manufacturers, National Highway Authority of India, NCAER, National Institute of Public Finance and Policy, Inter-State Council, School of International Studies (Jawaharlal Nehru University), Planning Commission and Ministry of Surface Transport.

8.8.2 **For carrying out the objectives of articles 301, 302, 303 and 304, and other purposes relating to the needs and requirements of inter-state trade and commerce and for purposes of eliminating barriers to inter-state trade and commerce Parliament should by law establish an authority called the "Interstate Trade and Commerce Commission" under the Ministry of Industry and Commerce under article 307 read with Entry 42 of List-I.**

D - Resolution of Disputes

Inter-State Disputes

8.9.1 In a constitutional set-up where powers are distributed between the Union and the States, it is natural to expect disputes as to on which side of the boundary a particular matter falls. Where such differences do arise, it is desirable that there should be a well thought out systemic mechanism for the resolution of such inter- State disputes.

8.9.2 Article 131 relates to the original jurisdiction of the Supreme Court and provides the judicial mechanism for dealing with inter-Governmental disputes involving any questions of law or fact on which existence or extent of a legal right depends between the Government of India and one or more States or between the Government of India and any State or States on the one side and one or more other States on the other or

between two or more States. However, a few matters are excluded either by express provisions or by necessary implication.

8.9.3 The Commission considered as to whether the Supreme Court should be given exclusive jurisdiction in controversies concerning the distribution of legislative powers. Incidentally, it may be mentioned here that article 131A was inserted in the Constitution *vide* the Constitution (Forty-second Amendment) Act, 1976 so as to provide exclusive jurisdiction to the Supreme Court in regard to the questions as to constitutional validity of Union laws. However, the said provision was repealed by the Constitution (Forty-third Amendment) Act, 1977. After carefully considering the issues, the Commission is of the view that no exclusive jurisdiction need be conferred on the Supreme Court in matters of controversies concerning distribution of legislative power between the Union and the States. It would deprive non-governmental parties of the facilities and the advantages of seeking remedy in the High Courts. However, there may be situations, which may require that such questions should not undergo a long drawn process of litigation and the Supreme Court should be enabled to dispose off such questions finally and quickly without its being made a court of exclusive jurisdiction. The Commission is of the view that the Supreme Court should be empowered to transfer such cases to itself and decide the same. For this purpose it is not necessary to amend article 131. It can be provided for by amending article 139A. This will also ensure that the Supreme Court would be able to apply its mind and *prima facie* see as to whether (a) the case really involves some substantial question of law and is not raising untenable or frivolous contentions; and (b) whether the case is such that it should be transferred to it and disposed of expeditiously.

8.9.4 **The Commission recommends that article 139A, which confers power on the Supreme Court to withdraw cases involving the same or substantially the same question of law, which are pending in Supreme Court and one or more High Courts, should be amended so as to provide that it can withdraw to itself cases even if they are pending in one court where such questions as to the legislative competence of the Parliament or State Legislature are involved.**

Inter-State Water Disputes

8.10.1 Water is a prime resource for sustaining life on earth. The domestic, agricultural and industrial uses of water are multiplying day by day and this phenomenal increase in demand for water in diverse fields has resulted in its scarcity. Moreover, availability of water is highly uneven in both space and time as it is dependent upon varying seasons of rainfall and capacity of storage. India is served by two great river systems, i.e. the Great Himalayan Drainage system and the peninsular river network. It has 14 major rivers that are inter-State rivers and 44 medium rivers of which 9 are inter-State rivers. Eighty five per cent of the Indian land mass lies within its major and medium inter-State rivers. The Commission considered the importance of inter-State water sharing as an area of great concern in maintaining the federal spirit and better Union-State and inter-State relations. The Commission accordingly studied the mechanisms available for efficient, productive and sustainable resource management of the country's river systems and allocation of inter-State water resources.

8.10.2 The Constitution does not itself lay down any specific machinery for adjudication of water disputes. Article 262(1) lays down that Parliament may by law provide for the adjudication of any disputes or complaints with respect to use, distribution or control of the waters of, or in, any inter-State river or river valley. The subject "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of List I" is a matter enumerated in entry 17 of the State List (List II) of the Seventh Schedule.

8.10.3 The expression "regulation and development of inter-State rivers and river valleys" in Entry 56 of the Union List in the Seventh Schedule of the Constitution would include the use, distribution and allocation of the waters of the inter-State rivers and river valleys between different riparian States. Otherwise the provision for the Union to take over the regulation and development under its control makes no sense and serves no purpose. The River Boards Act, 1956 which is admittedly enacted under Entry 56 of the Union List for the regulation and

development of inter-State rivers and river valleys does cover the field of the use, distribution and allocation of the waters of the inter-State rivers and river valleys. The very basis of a federal Constitution like ours mandates such interpretation and would not bear an interpretation to the contrary which will destroy the constitutional scheme. Although, therefore, it is possible technically to separate the "regulation and development" of the inter-State rivers and river valleys from the "use, distribution and allocation" of water, yet it is neither warranted nor necessary to do so.

Inter-State Water Disputes Act

8.11.1 Pursuant to the powers conferred by article262 of the Constitution, Parliament enacted the Inter-State Water Disputes Act, 1956 (Act 33 of 1956) to provide for adjudication of disputes relating to waters of inter-State river and river valleys. The Union Government has constituted several Tribunals under the aforesaid Act. Section 4(1) of the Inter-States Water Disputes Act, 1956 empowers the Central Government to constitute a Water Disputes Tribunal for adjudication of a water dispute when a request from any State Government in respect of such water dispute is received by it and it is of opinion that the water dispute cannot be negotiated. The process under the Act from the stage of constitution of the Tribunal to the giving of the award by it normally takes 7 to 10 years. The inordinate delay caused in constituting the Tribunals, delay in passing awards, framing of schemes or plans for giving effect to the decisions, and judicial review by the Supreme Court at times have been contributing factors in developing bitterness and friction between the States involved in the disputes. All these delays were also causing underutilization of water resources and hindering the timely development of the nation.

8.11.2 Having regard to the various infirmities and difficulties in speedy and timely resolution of disputes, the Commission on Centre-State Relations (commonly known as Sarkaria Commission) in Chapter XVII of its report (Volume I) gave several recommendations for implementation. Keeping in view the recommendations of the Sarkaria Commission, the Union Government introduced the Inter-State Water Disputes (Amendment) Bill, 2001 in Lok Sabha to ensure the setting up of inter–State Tribunals and submission of reports by the Tribunals in a time bound manner. (*See* the Background paper on the subject for details). It was passed by Lok Sabha on 03.08.2001 and is still pending in the Rajya Sabha Though the Bill has dealt with some important aspects, particularly the speedier settlement of Inter-State Water Disputes, the momentum of change in technologies requires quicker and larger mobilization of water resources to sufficiently meet the different needs including that of food security.

8.11.3 The Commission observed that in case of every water dispute there have been several occasions when one or the other party approached the Supreme Court by way of seeking judicial review both against the interim orders of the tribunal as also against the final decision. Further in the implementation of the decision of the tribunal the oustees or persons on behalf of the oustees resort to enforcing their fundamental rights under article 21 by a remedy under article 32, consequent on the submergence of their lands due to construction of reservoirs. This leads to adjudication by two forums one as to the use and distribution of water and the other relating to the enforcement of fundamental rights in the process of implementation of the decision of the Tribunal.

8.11.4 The Commission is of the view that it is not necessary to exclude Inter-State Water Disputes from the original jurisdiction of the Supreme Court under article 131 of the Constitution and that such disputes should also be made to fall within the exclusive jurisdiction of the Supreme Court. It has been noticed that Inter-State Water Disputes Act, 1956 has vested the Tribunal with a very unique jurisdiction under section 3. When a water dispute has arisen or is likely to arise by reason of the fact that the interest of the State or of the inhabitants thereof, in the waters of an inter-State river or river valley have been or are likely to be affected prejudicially by any executive action or legislation taken or passed or proposed to be taken or passed by another State, the aggrieved State Government may request the Union Government to refer the water dispute to a Tribunal for adjudication. Consequently, even a proposed legislation can be the subject matter of a dispute and interdicted by the Tribunal by a *quia timet* action. Courts do not exercise such powers of interdiction of legislative measures. Appropriate provision should be made for conferring such a unique power on the Supreme Court. It is recommended that the Inter-State Water Disputes Act, 1956 be repealed and in its place a more comprehensive parliamentary legislation should be enacted. However, it is necessary to make express provisions that the suit shall be instituted in the Supreme Court, which shall have exclusive jurisdiction.

8.11.5 It is not necessary to repeal article 262 of the Constitution for shifting the jurisdiction from the Tribunal to the Supreme Court. Article 262 is a very important provision and the said provision being a part of the Constitution as originally enacted and having come up before the courts several times, it is unlikely to successfully challenge the same. Once it is omitted or repealed, difficulties would arise if after experimenting on the changed form of adjudication, it is later felt or desired to have a Tribunal with a modified or changed jurisdiction or even if it is felt that the system of adjudication by a Tribunal as in the Act of 1956 would be better.

8.11.6 Article 131 is subject to the provisions of the Constitution. It may be noticed that article 262(2) is only an enabling provision and Parliament is not bound to enact a legislation constituting a Tribunal. A parliamentary legislation is sufficient to substitute the forum of the Supreme Court to the Tribunal. No amendment to the provisions of the Constitution may be required. This will enable Parliament to change the law, from time to time, as it may deem fit and proper by resorting to its power under article 262.

8.11.7 **The Commission feels that as river water disputes being important disputes between two or more States and/or the Union, they should be heard and disposed by a bench of not less than three Judges and if necessary, a bench of five Judges of the Supreme Court for the final disposal of the suit**.

8.11.8 **Appropriate provisions may be made as envisaged by article 145(1) in consultation with the Supreme Court or if the Supreme Court so opts to provide for the same by the Supreme Court Rules to appoint Commissioners or Masters and to have the evidence recorded not by the Supreme Court itself but by the Commissioners or Masters so that the precious time of the Supreme Court is saved.**

8.11.9 While a more radical suggestion has been made to place all the inter-State rivers under the jurisdiction of an authority appointed to administer them in national interest by law enacted by Union Parliament, it is a fact that in relation to regulation and development of inter-State waters, the River Boards Act, 1956 has remained a dead letter. Further, as and when occasions arose, different River Boards have been constituted under different Acts of Parliament to meet the needs in a particular river system according to the exigencies, facts and the circumstances. **The Commission, therefore, recommends that appropriate Parliamentary legislation should be made for repealing the River Boards Act, 1956 and replacing it by another comprehensive enactment under Entry 56 of List I. The new enactment should**

clearly define the constitution of the River Boards and their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and the recognized rights of the States through which the inter-State river passes and their inhabitants. While enacting the legislation, national interest should be the paramount consideration as inter-State rivers are 'material resources' of the community and are national assets. Such enactment should be passed by Parliament after having effective and meaningful consultation with all the State Governments.

Inter-State Council

8.12.1 Article 263 provides a mechanism for resolving problems by collective thinking, persuasion and discussion through a high level coordinating forum, namely the inter-State Council. In view of frequent friction between the Union and the States and between the States, the article has become more relevant. Article 263 empowers the President to establish an Inter-State Council at any time if it appears to him that the establishment of such a Council would serve the public interest. The Council could be charged with the duty of - (a) inquiring into and advising upon disputes which may have arisen between States;(b) investigating and discussing subjects in which some or all of the States, 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 coordination of policy and action with respect to that subject.

8.12.2 An Inter-State Council was established in 1990 but it met for the first time in 1996. Under the States Reorganization Act, 1956 five zonal Councils were set up. Besides this, North-Eastern Council has been setup under the North-Eastern Council Act, 1971.

8.12.3 The Commission observes that article 263 has vast potential and the same has not yet been fully utilized for resolving various problems concerning more than one State. Of late, it has been observed that where a treaty is entered into by the Union Government concerning a matter in the State List vitally affecting the interests of the States no prior consultation is made with

them. The forum of inter-State Council could be very well utilized for discussion of policy matters involving more than one State and arriving at a decision expeditiously. The Commission issued a consultation paper on "constitutional mechanism for the settlement of inter-State disputes" and elicited opinion of the general public. The responses were most helpful.

8.12.4 **The Commission, while endorsing the recommendations of the Commission on Centre-State Relations (Sarkaria Commission), recommends that in resolving problems and coordinating policy and action, the Union as well as the States should more effectively utilize the forum of inter-State Council. This will be in tune with the spirit of cooperative federalism requiring proper understanding and mutual confidence and resolution of problems of common interest expeditiously.**

Treaty Making

8.13.1 Entering into treaties and agreements with foreign powers is one of the attributes of State sovereignty. No State can insulate itself from the rest of the world whether it be in the matter of foreign relations, trade, commerce, economy, communications, environment or ecology. The advent of globalization and the enormous advances made in communication and information technology have rendered independent States more inter-dependent.

8.13.2 Article 246 (1) read with Entry 14 of List I- Union List of the Seventh Schedule empowers Parliament to make laws with respect to "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries". As per the provisions contained in article 253, Parliament has, notwithstanding anything contained in article 245 to 252, power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This

article (article 253), therefore, overrides the distribution of legislative powers provided for by article 246 read with Lists in the Seventh Schedule to the Constitution.

8.13.3 **The Commission recommends that for reducing tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of prior consultation by the Union Government with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List.**

E - Executive

Office of Governor

8.14.1 The Commission had issued a consultation paper with a questionnaire on the office of the Governor for eliciting public opinion. The issues raised and the suggestions made in the consultation paper related to amending articles 155, 156, 200 and 201 with a view to entrusting the selection of Governors to a Committee, making the five-year term a fixed tenure, providing for removal only by impeachment and limiting his powers in the matter of giving assent to Bills and reserving them for the consideration of the President.

8.14.2 After carefully considering the public responses and after full deliberations, the Commission does not agree to dilute the powers of the President in the matter of selection and appointment of Governors. **However, the Commission feels that the Governor of a State should be appointed by the President, after consultation with the Chief Minister of that State. Normally the five year term should be adhered to and removal or transfer of the**

Governor should be by following a similar procedure as for appointment i.e. after consultation with the Chief Minister of the concerned State.

8.14.3 **The Commission recommends that in the matter of selection of a Governor, the following matters mentioned in para 4.16.01 of Volume I of the Sarkaria Commission Report should be kept in mind:**

- **He should be eminent in some walk of life.**
- **He should be a person from outside the State.**
- **He should be a detached figure and not too intimately connected with the local politics of the State.**
- **He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.**

In selecting a Governor in accordance with the above criteria, the persons belonging to the minority groups should continue to be given a chance as hitherto.

Assent of the President and Governors

8.14.4 **There should be a time-limit - say a period of six months – within which the Governor should take a decision whether to grant assent or to reserve a Bill for consideration of the President. If the Bill is reserved for consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under article 143.**

8.14.5 In *Jamalpur Gram Panchayat* - Vs. *Malwinder Singh* - AIR 1985 SC 1394, the Supreme Court held that if the assent of the President were sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it. The court held that if the assent is sought and given, in general terms so as to be effective for all purposes, different considerations might arise. In the case before the Supreme Court case the assent was given by the President for giving protection to the legislation under article 31 (as it then stood) and article 31A and the court held that such assent would not operate for the purposes of article 254(2) of the Constitution. However, the court upheld the law passed by the State Legislature on the ground that it fell under entry 18 of the State List and not entry 41 of the Concurrent List.

8.14.6 **It is felt desirable that a suitable amendment should be made in the Constitution so that the assent given by the President should avail for all purposes of relevant articles of the Constitution.** It would be inappropriate to drag the assent of President into such arguments. From the time the Bill is introduced till the assent of President is given, the whole procedure and proceedings are legislative in character. It is a collective action of the President, the House of the People, and the Council of States. It is not permissible to enquire as to how the mind of each member of the House and the President worked during the entire proceedings beginning with the introduction of the Bill and concluding with the according of

assent by the President. The procedures are "certainly internal matters which are beyond the jurisdiction of the court to inquire into." The court is entitled to go into the questions as to whether the enactment is either ultra virus or unconstitutional. The assent of the President is not justiciable. See AIR 1983 SC 1019 at 1048 para 88 - M/s Hoechst Pharmaceuticals Ltd. Vs. State of Bihar and others. Even if noting sent to the President by the concerned Ministry does not reflect all the articles in the Constitution, which referred to the effect of the assent of the President i.e. articles 31A, 31C, 254, it cannot be presumed that the President was not aware of or did not bear in mind, the relevant articles dealing with the effect of the assent of the President. **However, it is desirable that when a Bill is sent for the President's assent, it would be appropriate to draw the attention of the President to all the articles of the Constitution, which refer to the need for the assent of the President to avoid any doubts in court proceedings.**

8.14.7 **A suitable article should be inserted in the Constitution to the effect that an assent given by the President to an Act shall not be permitted to be argued as to whether it was given for one purpose or another. When the President gives his assent to the Bill, it shall be deemed to have been given for all purposes of the Constitution.**

8.14.8 **It is recommended that the following proviso may be added as second proviso to article 111 of the Constitution:**

> **"Provided further that when the President declares that he assents to the Bill, the assent shall be deemed to be a general assent for all purposes of the Constitution."**

Suitable amendment may also be made in article 200.

Failure of Constitutional Machinery

8.15.1 The Constitution of a country – or, for that matter, any enactment containing important and far-reaching provisions – is expected to provide for situations where circumstances arise, in which those provisions cannot be worked in strict conformity with the constitutional or statutory text, as applicable in normal circumstances. In India, the specific topic of failure of constitutional machinery in the States is dealt with, in three articles of the Constitution – articles 355 to 357 and 365 – of which, article 356 is the one most talked about and subject of controversy allegedly on grounds of having been frequently misused and abused.

8.15.2 It is important that article 356 is read with the other relevant articles *viz.* articles 256, 257, 355 and 365. Insofar as article 355 also *inter alia* speaks of the duty of the Union to protect the State against external aggression and internal disturbance and to ensure that the government of the State is carried on in accordance with the Constitution, it is obvious that article 356 is not the only one to take care of a situation of failure of constitutional machinery. The Union can also act under article 355 *i.e.* without imposing President's rule. Article 355 can stand on its own. Also, Union Government can issue certain directions under articles 256 and 257. While article 356 authorises the President to issue a proclamation imposing President's rule over a State if he is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, article 365 says that where a State fails to comply with Union directions (under articles 256, 257 and others) "it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". The scheme of the Constitution seems to clearly suggest that before rushing to issue a proclamation under article 356, all other possible avenues should be explored and as Dr. Ambedkar said, article 356 should

be used only as a matter of last resort. It should first be ensured that the Union had done all that it could in discharge of its duty under article 355, that it had issued the necessary directions under articles 256-257 and that the State had failed to comply with or give effect to the directions.

Use-misuse of Article 356

8.16 Since the coming into force of the Constitution on 26 January 1950, article 356 and analogous provisions have been invoked 111 times. According to a Lok Sabha Secretariat study, on13 occasions the analogous provision namely section 51 of the Government of Union Territories Act 1963 was applied to Union Territories of which only Pondicherry had a legislative assembly until the occasion when it was last applied. In the remaining 98 instances the article was applied 10 times technically due to the mechanics of the Constitution in circumstances like reorganisation of the States, delay in completion of the process of elections, for revision of proclamation and there being no party with clear majority at the end of an election. In the remaining 88 instances a close scrutiny of records would show that in as many as 54 cases there were apparent circumstances to warrant invocation of article 356. These were instances of large scale defections leading to reduction of the ruling party into minority, withdrawal of support of coalition partners, voluntary resignation by the government in view of widespread agitations, large scale militancy, judicial disqualification of some members of the ruling party causing loss of majority in the House and there being no alternate party capable of forming a Government. About 13 cases of possible misuse are such in which defections and dissensions could have been alleged to be result of political manoeuvre or cases in which floor tests could have finally proved loss of support but were not resorted to. In 18 cases common perception is that of clear misuse. These involved the dismissal of 9 State Governments in

April 1977 and an equal number in February 1980. This analysis shows that number of cases of imposition of President's Rule out of 111, which could be considered as a misuse for dealing with political problems or considerations irrelevant for the purposes in that article such as mal-administration in the State are a little over 20. Clearly in many cases including those arising out of States Reorganisation it would appear that the President's Rule was inevitable. However, in view of the fact that article 356 represents a giant instrument of constitutional control of one tier of the constitutional structure over the other raises strong misapprehensions.

Sarkaria Commission

8.17 Chapter 6 of the Sarkaria Commission Report deals with emergency provisions, namely, articles 352 – 360. The Sarkaria Commission has made 12 recommendations; 11 of which are related to article 356 while 1 is related to article 355 of the Constitution. Sarkaria Commission also made specific recommendations for amendment of the Constitution with a view to protecting the States from what could be perceived as a politically-driven interference in self-governance of States. The underlined theme of the recommendations is to promote a constitutional structure and culture that promotes co-operative and sustained growth of federal institutions set down by the Constitution.

Should Article 356 be Deleted?

8.18 The Commission had issued a consultation paper along with a questionnaire with a view to elicit the views and responses of the public. Large majority of the responses were against

deletion of article 356 but favoured its being suitably amended to prevent misuse. There are three patent reasons which require the retention of the article:

(i) Article 356 and related provisions were regarded as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people.

(ii) In a fairly large number of cases the invocation of article 356 has been found to have been not only warranted but inevitable.

(iii) If this article is deleted, article 365 would lose relevance and use of article 355 in the absence of 356 might bring a drastic change in Union-State relations which may be worse from the point of view of both the States and the Union.

The Commission is, therefore, not in favour of deletion of article 356.

Need for Conventions

8.19.1 In considering the issues raised regarding article 356 the Commission found that a great part of the remedy to prevent its misuse lies in the domain of creating safeguards and constitutional conventions governing its use. The ultimate protection against the misuse of article 356 lies in the character of the political process itself. The Commission is, therefore, for generating a

constitutional culture that relies on conventions and treats them with same respect as a constitutional provision.

8.19.2 Article 356 has been lodged in the Constitution as a bulwark, a giant protection and a remedy of the last resort. The invocation of article 356 is a constitutional device, the operation of which is vested in the executive domain. In invocation, it is therefore essential to preserve its stature in the constitutional scheme. If the exercise of this power is perceived to yield to political expediency, it will greatly damage the majesty of the executive power and the federal balance. The Commission, therefore, recommends, in the spirit of the framers of the Constitution, that article 356 must be used sparingly and only as a remedy of the last resort and after exhausting action under other articles like 256, 257 and 355.

8.19.3 It has been widely represented that the process of invocation of article 356 must follow the principles of natural justice and fair consideration. This aspect also weighed heavily during discussions in the Constituent Assembly and the Chairman of the Drafting Committee had hoped that warning would be given to the errant States and they would be given an opportunity to explain their position. One other issue regarding the issue of such a warning is whether it should be made public or given wide publicity. The Commission have considered this aspect very carefully and have come to the conclusion that taking this matter to the public domain at this stage may apparently allow for transparency but is likely to generate a great deal of heat in the political domain providing the anti-social forces a free play for social disharmony and violence. It may also encourage from the very outset a process of litigation that may apply continuous brakes in exercise of the executive responsibility.

8.19.4 The Commission feels that in a large number of cases where article 356 has been used, the situation could be handled under article 355 i.e. without imposing President's rule under article 356. It is most unfortunate that article 355 has hardly been used.

8.19.5 **In case of political breakdown, the Commission recommends that before issuing a proclamation under article 356 the concerned State should be given an opportunity to explain its position and redress the situation, unless the situation is such, that following the above course would not be in the interest of security of State, or defence of the country, or for other reasons necessitating urgent action.**

Situation of Political breakdown

8.20.1 One of the principal criticisms against the imposition of the President's rule has been the unseemly hurry of Governors to recommend it - particularly in a politically conflicting context – without exploring all possibilities of having an alternative Government enjoying confidence of the House. Even while making such an exploration the Governors placed excessive reliance on their subjective satisfaction to ascertain majority support for one or the other political party by resorting to headcounts of supporters presented before them by the political parties.

8.20.2 The issue of determining the majority support of a political party in the House has been dealt with in the Rajamannar Committee Report, Sarkaria Commission and the Bommai judgement. The Commission notes that the political events in a divisive context in several States have repeatedly shown tremendous speed and mobility of shifting political loyalties. In such a situation the task that a Governor may impose upon himself to determine the majority support of one or the other party is indeed an onerous one. The assessment of the Governor, no matter how carefully and objectively determined, can loose validity in no time in the climate of quick shifting sands of political loyalty. It is, therefore, not a matter of subjective determination of the Governor or the President. The constitutional requirement is that a Government should enjoy the confidence of the House and its open and objective determination is possible only on the floor of the House. There may conceivably be exceptional circumstances and situations which are not conducive to hold the floor test. The Commission is not, therefore, in favour of a static binding

rule but would rely on a political and constitutional process in a constitutional forum for a valid determination of majority support for a particular party in the House. The procedure suggested forms a part of the Bommai judgement and thus holds ground judicially.

8.20.3 **The Commission recommends that the question whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and nowhere else. If necessary, the Union Government should take the required steps, to enable the Legislative Assembly to meet and freely transact its business. The Governor should not be allowed to dismiss the Ministry, so long as it enjoys the confidence of the House. It is only where a Chief Minister refuses to resign, after his Ministry is defeated on a motion of no-confidence, that the Governor can dismiss the State Government. In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, (if there is one), to continue as a caretaker government, provided the Ministry was defeated solely on a issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate.**

8.20.4 **The problem would stand largely resolved if the recommendations made in para 4.20.7 in Chapter 4 in regard to the election of the leader of the House (Chief Minister) and the removal of the Government only by a constructive vote of no-confidence are accepted and implemented.**

8.20.5 Clause (1) of article 356 contains the expression 'or otherwise'. Clearly, the satisfaction of the President, as regards the existence of the situation contemplated under article 356, flows from two streams. It is immaterial that in most cases where article 356 had been invoked in the past it was on the basis of the report of the Governor. Given the circumstances of global nexus in activities of terrorism, insurgency, lawlessness, the material flowing from the source

"otherwise" than the report of the Governor is equally germane to the scheme of invoking this provision. If, to meet with the desirable objective of transparency, as suggested by the Sarkaria Commission, the Governor's Report is projected in the public domain by making it a speaking document and given wide publicity, it would raise serious problems in the discharge of the executive responsibility. For purposes of publicity it would be difficult to differentiate between the Report of the Governor and the materials received "otherwise". **The Commission recommends that normally President's Rule in a State should be proclaimed on the basis of Governor's Report under article 356(1). The Governor's report should be a "speaking document", containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy himself, as to the existence or otherwise of the situation contemplated in article 356.**

Constitutional Amendments

8.21.1 Article 356 has been amended 10 times principally by way of amendment of clause 356(4) and by substitution/omission of proviso to Article 356(5). These were basically procedural changes. Article 356, as amended by Constitution (44th Amendment) provides that a resolution with respect to the continuance in force of a proclamation for any period beyond one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless two conditions are satisfied, *viz:*-

(i) that a proclamation of Emergency is in operation in the whole of India or as the case may be, in the whole or any part of the State; and

(ii) that the Election Commission certifies that the continuance in force of the proclamation during the extended period is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

8.21.2 The fulfillment of these two conditions together are a requirement precedent to the continuation of the proclamation. It could give rise to occasions for amendment of the Constitution from time to time merely for the purpose of this clause as happened in case of Punjab. Circumstances may arise where even without the proclamation of Emergency under article 352, it may be difficult to hold general elections to the State Assembly. In such a situation continuation of President's rule may become necessary. It may, therefore, be more practicable to delink the two conditions allowing for operation of each condition in its own specific circumstances for continuation of the President's rule. This would allow for flexibility and save the Constitution from the need to amend it from time to time.

8.21.3 The Commission recommends that in clause (5) of article 356 of the Constitution, in sub-clause (a) the word "and" occurring at the end should be substituted by "or" so that even without the State being under a proclamation of Emergency, President's rule may be continued if elections cannot be held.

8.21.4 Whenever a proclamation under article 356 has been issued and approved by the Parliament it may become necessary to review the continuance in force of the proclamation and to restore the democratic processes earlier than the expiry of the stipulated period. The Commission are of the view that this could be secured by incorporating safeguards corresponding, in principal, to clauses (7) and (8) of article 352. The Commission, therefore, recommends that clauses (6) & (7) under article 356 may be added on the following lines:

> "(6) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a proclamation issued under clause (1) or a proclamation varying such proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such proclamation.

(7) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a proclamation issued under clause (1) or a proclamation varying such proclamation:

(a) to the Speaker, if the House is in session; or

(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution."

Dissolution of Assembly

8.22.1 When it is decided to issue a proclamation under article 356(1), a matter for consideration that arises is whether the Legislative Assembly should also be dissolved or not. Article 356 does not explicitly provide for dissolution of the Assembly. One opinion is that if till expiry of two months from the Presidential proclamation and on the approval received from both Houses of Parliament the Legislative Assembly is not dissolved, it would give rise to operational disharmony. Since the executive power of the Union or State is co-extensive with

their legislative powers respectively, bicameral operations of the legislative and executive powers, both of the State Legislature and Parliament in List II of VII Schedule, is an anathema to the democratic principle and the constitutional scheme. However, the majority opinion in the Bommai judgement holds that the rationale of clause (3) that every proclamation issued under article 356 shall be laid before both Houses of Parliament and shall cease to operate at the expiry of two months unless before the expiration of that period it has been approved by resolutions passed by both Houses of Parliament, is to provide a salutary check on the executive power entrenching parliamentary supremacy over the executive.

8.22.2 The Commission having considered these two opinions in the background of repeated criticism of arbitrary use of article 356 by the executive, is of the view that the check provided under clause 3 of article 356 would be ineffective by an irreversible decision before Parliament has had an opportunity to consider it. The power of dissolution has been inferred by reading sub clause (a) of clause 1 of article 356 along with article 174 which empowers the Governor to dissolve Legislative Assembly. Having regard to the overall constitutional scheme it would be necessary to secure the exercise of consideration of the proclamation by the Parliament before the Assembly is dissolved.

8.22.3 The Commission, therefore, recommends that article 356 should be amended to ensure that the State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356(1) has been laid before Parliament and it has had an opportunity to consider it.

Miscellaneous Matters

Coorg Organisations

8.23.1 The Commission considered memoranda submitted by Coorgi organizations. While one wanted a separate State or Union Territory status for Coorg, the other opposed it. The Commission appreciates the contribution made by the Coorgis to the national cause and **recommends that the Government may consider having a Sainik School and setting up a Development Board for them and also the demand for a University in Coorg.** The Commission did not favour the demand for a separate State or granting of Union Territory status for the area.

Sindhi Organisations

8.23.2 The Commission considered the representations made by various Sindhi organizations. It was agreed that some of the grievances of the community were genuine and required action and it was not possible for the Commission to consider granting any separate constitutional status to

the Sindhi community as such or to consider any request for carving out a separate territory as a Sindhi state or a Sindhi region. **However, the Commission recommends that steps may be taken for better protection of Sindhi language and culture by setting up a Centre of Sindhi Language and Culture with the State providing necessary facilities for the same. The Commission recommends further that the difficulties faced by the Sindhi migrants may be examined and corrective measures taken to facilitate grant of citizenship as per the existing law.**