

CHAPTER - III :

CONSTRUCTIONAL PERSPECTIVE :

THE INDIAN CONSTITUTION AND THE CONSTITUTIONAL
BASIS OF CENTRE-STATE RELATIONS IN EDUCATION

- 3.1 Introduction
 - 3.2 The Nature of Federalism
 - 3.3 The Federal Imperatives and the Emergence and Growth of the Idea of Federalism in India
 - 3.4 Centripetal Tendencies After the Advent of Independence
 - 3.5 The Indian Constitution and Union-States Relations
 - 3.6 The Indian Constitution and Education
 - 3.7 Education in Some Other Federations in the World
 - 3.8 Conclusion
- Notes and References

3.1 INTRCDUCTION

In the previous chapter, an attempt was made to describe and discuss the origin and development of the relationship between the Central Government and the Provincial Governments during the British Raj and upto 1950 when the Constitution of India came into operation. This chapter would deal with the legal basis of Centre-State relations in education. This is intended to develop a Constitutional perspective to look at and assess this vital relationship in education. In doing this, the Constitutional provisions relating to education will be critically examined and the constitutional position of the Centre in regard to the administration of education will be broadly compared with the same in some other federal countries of the world.

The conventional method of enquiry into a federal system usually takes a formalistic turn and is oriented to the structural relationships envisaged in the Constitution between the Federal Government and its component units. This approach is succinctly reflected in Dicey's memorable and off-quoted phrase: "Federalism... means legalism".¹ Such an approach has its obvious limitations. But even the opposite

approach of concentrating attention on the actual roles and relationships of the two levels of government in a federal set-up (some times designated as a 'functional approach'²) must, to be meaningful, start with a study of the formal arrangements in the constitution. This is one of the tasks attempted in this chapter.

3.2 THE NATURE OF FEDERALISM

Before proceeding further, a reference may be made here to a definitional issue. The term 'federal' in the context of the Indian Constitution has created a great deal of controversy. Several jurists, political thinkers and public men have questioned its federal character. The renowned political scientist Wheare, for instance, characterised it as 'quasi-federal'. The Indian Constitution, he said, had established a 'system of government which is at most quasi-federal, almost devolutionary in character, a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features'.³ Others have sought to pin to it labels like 'fedro-unitary' and 'pseudo-federal'. This has obviously been, as pointed out by Bombwall, due to the wide endowment of authority to the Centre, the Union Parliaments' power to alter unilaterally the boundaries of the

constituent States, the 'normative' and coordinating authority which the Centre can exercise in some segments of the area of state autonomy and the provision for a virtual abrogation of federal relations during emergencies.⁴ It is not proposed to enter into this controversy here; nor is it necessary to do so for the present purposes. One may revert to this theme of the putative primacy of the union in the Indian federation ^{may be reverted to} later in the discussion. Here, it need only be pointed out that the term 'federal' is used in the present context only in recognition of the two levels of government in India and the delimitation of their original jurisdictions in the Constitution.⁵ These indeed were also the criteria emphasised by Dr. Ambedkar himself in the Constituent Assembly,⁶ while joining issue with those who cast doubts on the federal character of the Constitution.⁷

As stated earlier, the major focus in this chapter is on an examination of the formal arrangements in the Constitution regarding education. But no constitution in the world is an accident. Constitutions have a history and an 'etiology'. "Federal governments", says Frankfurt, "are not the offspring of political science; they are the product of economic and social pressures". It is this fact that makes most constitutions a variant of their type.⁸ The essential

nature of a federation, therefore is to be sought, as Livingston insists, not in the shadings of legal and constitutional terminology but in the forces that have made the outward forms of the federation necessary.⁹ The Indian Constitution is no exception to this principle. It is also a product of historical developments. Its provisions can, thus, be understood only in the background of these developments. It will not be, therefore, out of place here to make a brief survey of the emergence of the federal idea in India, its growth and the immediate political compulsions behind the final consummation of this idea, the Indian Constitution, before the educational provisions enshrined in it are taken up for discussion.

3.3 EMERGENCE OF THE IDEA OF FEDERALISM : GROWTH, DEVELOPMENT AND IMPERATIVES

Institution-building within a federal arrangement is notoriously difficult.¹⁰ It has been proved incalculably so in the new nations of Asia and Africa. Compared to the experience of these nations, constitution-making in India has been exceptionally easy. This has been possible, as Rajani Kothari has rightly pointed out,¹¹ because of antecedent agreements on 'fundamentals'. As far back as 1904,

Sir Henry Cotton had mooted the federal idea in his presidential address to the Indian National Congress. Sir Henry Cotton said,

"The ideal of an Indian patriot is the establishment of a federation of free and separate states, the United States of India, placed on a fraternal footing with the self-governing Colonies, each with its local autonomy cemented together under the aegis of Great Britain".¹²

About a decade later, in 1915, G.K. Gokhale in his 'Political Testament' said: "The grant of political autonomy foreshadowed in the Delhi Dispatch would be a fitting concession to make to the people of India at the close of the war".¹³ In 1924, Dewan Bahadur T. Rangachariar moved a resolution in the Bengal Legislative Assembly entreating the Governor-General in Council to take steps for revising the Government of India Act so as to secure for India full self-governing dominion status within the British empire and provincial autonomy in the provinces.¹⁴ (Emphasis added). By the end of that decade, this consensus on the desired future political set-up for the country had reached a point when it was possible for the Motilal Nehru Committee appointed by the All Parties Conference of 1928, convened by the

Congress and attended by as many as thirty-four political groups to spell out, in a comprehensive manner, the features of free India's future polity. It recommended, among other things a parliamentary and federal structure of government.¹⁵ Later, a clear and emphatic acceptance of the federal solution to the Indian problem was to be found in the Report of the Indian Statutory Commission, 1929.¹⁶ The Commission stated its belief that the evolution of the Indian political system would be in the direction of federalism and recommended the setting up of a Council for Greater India, consisting of representatives of British India and the Indian states, with the Viceroy as President. The Commission thought of this as the first step towards the establishment of the federal system. "The whole scheme for the Council", said the Commission, "is designed to make a beginning in the process which may one day lead to Indian Federation".¹⁷

The Indian Statutory Commission was an all-white commission and was vehemently opposed by Indian political opinion. So, Sir John Simon, the chairman of the Commission, suggested to the British Prime Minister in a letter that, after the completion of the work of the Commission, His Majesty's Government should meet in a conference both the representatives of British India and those of the states for

the purpose of seeking the greatest possible measure of agreement for the final proposal which it would later be the duty of His Majesty's Government to submit to the parliament.¹⁸ This suggestion was accepted by the British Government and thus followed the Round Table Conference which met in three sessions.

It is probably no exaggeration to say that the early foundations of the Indian political system as it exists to-day were laid in the Round Table Conference.¹⁹ The last session of the Round Table Conference which met in November 1932 was not a conspicuous success, for various reasons.²⁰ The British Government, however, proceeded to issue a White Paper containing a detailed outline of the new constitution in the form of proposals. The proposals were examined by a Joint Select Committee of the two houses of the British parliament and finally enacted into the Government of India Act, 1935.

It is not the purpose here to go into the details of the provisions of the Government of India Act 1935.²¹ But, it is worth pointing out that the Indian Constitution is modelled on that Act; indeed, many Articles of the Constitution have been lifted, word for word, from it.²² The corres-

pondence between the scheme of federation envisaged in the 1935 Act and the present constitution is so close that the latter has been, not entirely without justification described as a 'palimpsest of the Act'.²³

This brief and therefore, necessarily sketchy chronicle of constitutional developments during the early decades of the century was attempted only to show the extent of prior agreement in the country on the nature of the future polity. Such large agreement on a vital issue such as this could not indeed be a mere historical accident. It was the result of certain imperatives for federalism inherent in the Indian situation. What then were these imperatives?

The basic and perhaps the most obvious compulsion behind Indian federalism is its vast size and its socio-cultural plurality. This is what prompted Rasheeduddin Khan to say: 'India's polity is federal twice over.' Political federalism is superimposed over a geographical and socio-cultural federalism. Indeed, the long survival and continuity of the latter in history makes India the largest and the most persistent plural society, 'the like of which human history has never known'.²⁴

Physically, the country stretches over some 12,59,797 square miles, a forty-fourth of the world's land area, and covers almost the entire gamut of climatic conditions. The continental dimensions of the country have led some to describe it as "a mere geographical expression as Europe or Africa";²⁵ others have refused to concede that it was one country.²⁶ Unitarianism in a country of this size, for obvious reasons, is administratively inexpedient,²⁷ as has been repeatedly shown by its history.²⁸ Justice P.N. Saprú was, therefore, right when he said: "Our founding fathers wisely did not establish for this country a completely unitary government in which there was no distribution of sovereignty among the various units composing it. Any such attempt would have ... broken down as India is too vast a country to be governed as a completely unitary state."²⁹

The physical dimensions of the country is only matched by its socio-cultural plurality. India has been sometimes compared to a fruit with the combined properties of a tangerine and an onion. Like a tangerine, India is divided into segments - linguistic, regional, religious and tribal. And, like an onion, it is composed of a succession of layers - castes and socio-economic classes, with the layers of each segment unconnected with the layers of other segments.³⁰

Referring to this variety of India's culture and society, Pandit Nehru wrote in his simple but inimitable style :

"The diversity of India is tremendous; it is obvious; it lies on the surface and anybody can see it. It concerns itself with physical appearances as well as certain mental habits and traits. There is little in common, to outward seeming, between the Pathan of the North-West and the Tamil in the far South".³¹

Cultural particularism manifesting itself through historically integrated geographical units has, as Amal Ray points out, always acted as a check on any tendency towards centralisation in Indian history.³² The Maurya Empire provided the archetype of the polity towards which India constantly tended. In its organisation, this empire was the antithesis of the monolithic, centralised Roman empire. It was a kind of pristine federalism in which regional autonomy was recognised and respected.³³ During the Muslim period, an effort was made to establish a centralised state. This was understandable, for, the rulers being a minority community depended for the stability of their rule on the loyalty, primarily, of their co-religionists. The state, under such conditions, tended to be a 'police state' which touched the life of the common people only marginally; the

latter, largely, were left to manage their affairs through traditional institutions of the village.³⁴ The State, under such circumstances, did not, naturally, reflect the imperatives of the socio-cultural life of the people.³⁵ Even so, the attempt at centralisation was only a partial success; centrifugal forces asserted themselves when 'super-men ceased to occupy the throne at Delhi'.³⁶

Indian society was thus essentially federal in nature. "Centralisation", declared Dr. Jayaswal after his well-known study of the Hindu polity, "was against the genius of the race."³⁷ This genius was rooted in the vastness of the territory which the race inhabited and its socio-cultural diversity.³⁸

The second imperative for federalism was what Jefferson, in another context, called 'local egoisms'.³⁹ This was not, as can be easily seen, entirely unconnected with the imperative which has been already discussed. Given the vastness of the country and its socio-cultural diversity, the emergence and crystallisation of local consciousness and local patriotism was only a natural development. The growth of nationalism later would have itself, as a simultaneous sociological process, given birth to sub-national identities.⁴⁰ Political develop-

ments after the transfer of power from the East India Company to the Crown, however, anticipated this process.

The Charter Act of 1833 had sought to give a completely centralised character to the British administration in India.⁴¹ It took away from the provincial governments their legislative and financial powers and vested them in the Governor-General who was made responsible for the "superintendence, direction and control of the whole civil and military government of all territories and revenues" of the British India.⁴² The process of centralisation, however, had to be soon reversed. The kind of 'centralised imperialism' envisaged in the Charter Act of 1833 and similar measures had become 'more and more impracticable' reminding one of the 19th century French author and statesman who had pointed out a century ago that though a continental country could be successfully governed centrally, it could not be successfully administered that way. A process of devolution of power was, therefore, initiated starting with the Councils Act of 1861 and culminating in the Government of India Acts of 1919 and 1935.⁴³ The foundations of provincial autonomy were thus gradually but firmly laid.

The policy of decentralisation may have been, to start with, prompted by the needs of efficient administration. But, soon it transformed itself into a 'control strategy' in the hands of the British. The national awakening in the country that had become manifest well before the Indian National Congress was established in 1885, had, by the 1920's become a national upsurge, no more confined to the westernised elite.⁴⁴ The British sought to slow down this high degree of political mobilization through the creation of decentralised structures of decision-making and the sponsoring of intermediate interest groups.⁴⁵ The policy was "to turn the attention of the people from the highest fortress to the important provincial posts and to divert popular energy to capturing them".⁴⁶ That this was, in no mean measure, the actual result of the successive measures of decentralisation has been pointed out by many historians.⁴⁷

British intentions behind the policy of decentralisation, however, need not detain one here. What matters here is its outcome. The policy brought about a change in the 'articulation pattern', to use a modern expression, of Indian politics; the provinces became foci of political activity. With this, they acquired a new political consciousness. The provincial legislatures helped them to build up a local

parliamentary tradition. Political groups and parties arose in different provinces and they acquired a vested interest in provincial autonomy.⁴⁸ A provincial political elite came into existence.⁴⁹ In sum, the provinces acquired a 'personality' of their own, which transformed them into sub-national identities that later exercised a strong pull towards federalism in Indian constitutional development.⁵⁰

Two other factors that strengthened the trend towards a federal state structure in India may also be mentioned. These were, to use an expression which is far from felicitous, 'Hindu-Muslim antagonism' and the existence of the so-called Native States. There is no need to go in detail into these problems here as their importance now is only as historical determinants of the federal idea in India.⁵¹ The picture of the socio-political context of the emergence of Indian federalism, will not, however, be complete without at least a brief reference to them.

The relevance of the Muslim problem to federalism in India arose from two facts. In the first place, though the Muslim community in India constituted a minority, they were too numerous to receive what a perceptive writer on the issue calls "the conventional minority treatment".⁵² Secondly,

Indian Muslims, for various reasons which need not detain us here, looked upon themselves as a distinct political entity. These two facts, however, did not constitute sufficient condition for active Hindu-Muslim antagonism. As Palme Dutt justly points out, the kind of Hindu-Muslim conflicts associated with British rule, especially with the latter part of it, was not in evidence before. There were wars between states which might have Hindu or Muslim rulers; but these wars, at no time, took on the character of a Hindu-Muslim clash. Hindu and Muslim rulers freely employed members of the other community to the highest positions in the state.⁵³ But, the British imperial rule in India borrowed from history the old Roman motto of Divide et impera and adopted it as their 'manipulative strategy' against the nascent Indian nationalism.⁵⁴ They incited and politicised communities in India (the chief amongst which, naturally, was the Muslim community) and through a series of measures, invested them with an exclusive juristic-cum-political identity. This was then sought to be juxtaposed against the now rapidly emerging composite identity.⁵⁵ In the political situation created by this policy and the fact that Muslims constituted a majority in several provinces of British India, federalism seemed to offer a natural and,

perhaps, the only satisfactory solution to the Hindu-Muslim problem in much the same way as federalism had provided a solution to the English-French problem in Canada.⁵⁶

The 'Native' or, as they were sometimes called, 'Indian States',⁵⁷ were also a problem created by the British. The latter divided India into unequal segments, some 563 of them, ranging from states like Hyderabad, as large as Italy, with a population of nearly a million and a half, to the Simla Hill States which were little more than small holdings. This vivisection of the country, grossly irrational in character on the face of it, went far beyond an administrative arrangement (which really it was not) and affected its social, economic and political life. The British rule at first sought to terminate this 'motely^e disarray of India'. In the early decades of the 19th century, when British domination was still confidently advancing, a policy of annexation was actively followed. As has been rightly remarked, Lord Dalhousie (1848-56), by his 'Doctrine of Lapse' had anticipated Sardar Patel by about a century.⁵⁸ But the Revolt of 1857 proved to be a turning point here also, as indeed it was in many other aspects of British rule in India. The Revolt was the last attempt by the former rulers of the country and the feudal forces they represented to reverse the tide of

British domination. With its suppression, the feudal forces ceased to be a menace and potential rival to British rule in India. The danger now was from the growing national awakening in the country and the policy was consciously adopted of preserving the princes and fashioning them as the bulwark of British rule in India.⁵⁹ The Queen's Proclamation of 1858 marked the ushering in of the new policy. "We shall respect", said the Proclamation, "the rights, dignity and honour of the Native Princes as our own".⁶⁰

As nineteenth century India ended and national aspirations became more articulate, the British sought to build up the princes as a political pressure group. As early as 1906, one finds Lord Minto playing with the idea of establishing an Imperial Advisory Council consisting of ruling chiefs and territorial magnates. Lord Hardinge and his successor, Lord Chelmsford, initiated and developed the practice of collective consultations with the ruling chiefs and finally in 1921, following a recommendation made in the Montford Report, the Chamber of Princes was set up. Later, when it became evident that responsible government at the Centre could not be stalled for long, the British wanted to bring the states into the new constitutional set-up.⁶¹ The purpose, of course, was clear. In the words of Lord Reading, uttered in

a rare moment of political honesty, it was to 'get what steady influence' they could against the demand for secède from the Empire.⁶² But, the princes as was but independence and the right to free natural, had no intention of allowing a British Indian legislature to assume the Viceroy's powers.⁶³ Obviously, they could be persuaded to associate with British India in any constitutional arrangement that might be devised, only on a federal basis.

These, then, were the imperatives in the Indian situation that made federalism inevitable. These imperatives, however, had operated (particularly, the last two) in the direction of a consensus in favour of a federal polity based on a minimal Centre and maximum autonomy to constituent units. But, the Indian constitution, as it was noted elsewhere,⁶⁴ creates a 'paramount' Centre.⁶⁵ This shift in the direction of federal development in the country is important, for it is only in the light of this shift and the political compulsions behind it that the Indian constitution and its working can be understood.

3.4 : CENTRIPETAL TENDENCIES AFTER THE ADVENT OF INDEPENDENCE

The advent of freedom in 1947 was unfortunately accompanied by the division of the country. This had a

far-reaching impact on Indian federalism as it was embodied in the Indian Constitution. As it has been seen, -the two factors in the Indian political situation that had largely contributed to the general agreement in favour of a federal set-up with a weak centre and strong provincial autonomy were the Hindu-Muslim question and the problem of the Princely States. With partition and the establishment of Pakistan, one of these two major reasons for curbing the long-cherished nationalist aspirations for a united Indian polity with a strong Centre had been removed. Presenting the Second Report of the Union Powers Committee to the Constituent Assembly, Mr. N. Gopaldaswami Ayyangar took note of the development and recorded the reaction of the members of the Committee to it, in the following words :

"Now, Sir, when this committee met after its 'first' report had been presented, we were relieved of the shackles which we had imposed on ourselves on account of the acceptance of the Cabinet Mission Plan⁶⁶ and the Committee came to the conclusion that we should make the centre in this country as strong as possible..."⁶⁷

Under the firm and determined leadership of the late Sardar Vallabhbhai Patel, 'that far-sighted statesman' as Lord Mountbatten called him, the difficult task of integrating

the Princely States, not a few amongst whom were ambivalent to the idea initially, with the rest of the country, was also accomplished with surprising dispatch and smoothness. This also had an impact, similar to the one that followed partition on Indian federalism and the Constitution. The achievement indeed was one 'that should redound to the credit of any nation or people at any phase of history'.⁶⁸ But, its significance for constitution-making was that the constitution now did not form, in the words of the great Sardar himself, 'an alliance between democracies and dynasties'.⁶⁹ There was, thus, no need to keep the rebus between the Centre and the federating units deliberately loose. As a result, 'the Constitution which was framed at the integration of the States provided (for) a strong democratic government at the Centre.'⁷⁰

The centripetal tendencies that came to the force following partition and the integration of the Native States were reinforced by the political climate of the country immediately after independence. At no other time in the history of free India did the country face so many and such serious challenges. There was, for instance, the mounting pressure on the internal law and order situation, arising mainly from communal riots on a large scale. There was also

the huge problem of rehabilitating the refugees who were arriving in their thousands from across the border. Then there were the economic difficulties that followed partition as its aftermath. It is a tribute to the political maturity of the Indian leaders of the post-independence era, that most of these problems were sorted out in a relatively short time.⁷¹ But, they served as an object lesson illustrating the need for a strong Centre to the constitution-makers, as well as the multitudes who watched them at work.

The founding fathers were perhaps also influenced by what may be called a trans-national factor. As would be obvious even to the most casual observer, federal States the world over has shown a tendency towards centralisation. This has happened even in the 'ideal federal state', the United States of America, where as a result, the word 'government' itself to-day is, as Maaddox and Fuquay put it, synonymous with 'national government' in the minds of the ordinary citizen.⁷² Dr. Ambedkar obviously had this tendency in mind when he said in the Constituent Assembly that however much one denied powers to the centre, it was difficult to prevent it from becoming strong.⁷³ The constitution-makers preferred to take note of this tendency instead of, as Alladi put it while speaking in the Constituent Assembly,

leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation.⁷⁴ The result was that all attempts in the Constituent Assembly at the resurrection of the earlier idea of a minimal federation was strongly and successfully resisted.⁷⁵

It has already been pointed out that federal constitutions are not modelled on paradigms in theory; they are products of socio-economic and political pressures.⁷⁶ What has preceded was an attempt to delineate, broadly though, those pressures in the case of the Federal Constitution of India. It is in the background of these that one should try to understand the provisions of the constitution including those relating to education, to a discussion of which we now turn.

3.5 THE INDIAN CONSTITUTION AND UNION-STATE RELATIONS

It has been seen that the chief characteristic of a federal state is the co-existence of two governments - the general or federal government and the governments of the federating units.⁷⁷ This necessarily involves the division of governmental powers between the federal government on the one hand and the governments of the units on the

other,⁷⁸ thus giving plenary powers of legislation, among other powers, to both of them⁷⁹ and at the same time, setting limits to their legislative and other jurisdictions.

The division of legislative power in the Indian Constitution is made in the provisions of Part XI of the Constitution which relate to 'Relations between the Union and the States' and the entries in the three lists of its Seventh Schedule. The relevant Articles of Part XI of the Constitution lay down that the Indian Parliament may make laws for the whole or any part of the territory of India while the legislature of a State may do so only for the State or a part of it; that the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule;⁸⁰ that both the Parliament and the State Legislatures have concurrent powers of legislation with respect to List III;⁸¹ and, that State Legislatures have exclusive power of legislation with respect to List II.⁸² They also vest residuary powers of legislation with the Parliament.⁸³ The entries in the three lists of the Seventh Schedule enumerate, as must be evident from the above, the heads of legislation within the jurisdiction of the Union, the State and, within the concurrent jurisdiction of both.

It is not necessary here to go into the basis and the principles governing the division of legislative powers in a federation.⁸⁴ In the Indian case, the distribution of powers has generally followed the pattern of the Government of India Act, 1935,⁸⁵ which, too, provided for three legislative lists. If it deviates from the 1935 Act, it has only been to make the pattern set by that Act more rigorous by making the lists far more exhaustive, 'the intention of the framers obviously being to cover every possible matter likely to fall within the field of governmental activity'.⁸⁶ The Indian Constitution, thus, makes perhaps the world's most elaborate and detailed distribution of powers between the federation and its constituent units.

In assessing the three legislative lists, as a background to an examination of the entries in them relating to any given area of legislation-in the present case, education - one is naturally tempted to make a comparison between their size and content. In size, the Union List contains 98,⁸⁷ the Concurrent List 47 and the State List 66 items. The extensiveness of the Union List is, therefore, striking.⁸⁸ It must also be kept in mind that in the event of any repugnancy between a law made by the Parliament and that made by a State legislature, it is

the former that prevails⁸⁹ so that in principle the Union can effectively absorb the entire field covered by the 47 items of the Concurrent List by the simple expediency of legislating on them.⁹⁰

A rough analysis of the content of the State List will provide ample indications of the balance of power struck in the Indian Constitution with respect to legislation. Such an analysis shows that about 30 (that is, nearly half) of the 66 items of this List deal with ordinary police functions and some 22 or so with measures of taxation.⁹¹ Only the remaining 14 items pertain to 'development' which is to-day the most crucial concern of any emerging nation. Among what is called police functions are also included such innocuous items as 'Pilgrimages, other than pilgrimages to places outside India' (Entry 7), 'Burials and burial grounds; cremations and cremation grounds' (Entry 10) and 'betting and gambling' (Entry 34).⁹² Again, the number of entries relating to development, though small in itself can be misleading. In several cases, the amplitude of these entries have been constricted by entries in the Union list.⁹³ Entry 24, one of the most important entries in the State List, is perhaps a good example.⁹⁴ The entry reads: "Industries subject to the provisions of (Entries 7 and 52).⁹⁵ The entry, as can be seen, submits itself to two

entries in Union List which invest the Union with considerable powers in the field of industry.⁹⁶ The Rajamannar Committee appointed by the Government of Tamil Nadu and referred to earlier in a footnote⁹⁷ found these entries 'considerably hampering the the industrial progress of the states and destroying their initiative'.

An assessment of the three legislative lists on these lines seems to lead one to the conclusion that the Union List both in its size and content is more substantial than the State List. This does not, however, mean that every item of legislation included in the latter is of a lesser significance. There are important heads of legislation included in the State List also. Education is obviously one of them.⁹⁸

3.6 THE INDIAN CONSTITUTION AND EDUCATION

Provisions relating to education are spread over several parts of the Indian Constitution. In Part IV of the Constitution relating to the 'Directive Principles of State Policy'.⁹⁹ There are the provisions which lay down the educational desiderata the country should strive to achieve. There is the provision in Part XVII of the Constitution which invests the Union with the responsibility to see that facilities are available to

linguistic minorities for instruction in their mother tongue at the primary stage. Then there are the provisions in Part III which guarantee certain educational and cultural rights to individuals and minorities based on religion or language.¹⁰⁰ Finally, there are the provisions that divide legislative power in education between the Union and the States.

The relevance of the provisions in Parts III and IV of the Constitution for Union State relations in education lies largely in the fact that 'the State' includes, for the purposes of both these parts, "the Government and Parliament of India and the Government and Legislature of each of the States and all local and other authorities within the territory of India or under the control of the Government of India"¹⁰¹. Thus, when Article 45 (Part IV) directs that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years", it is addressed not only to the States, but, to both the Union and the States equally, and also the local authorities. The Union, therefore, has, under Article 45, the duty to see that the constitutional directive regarding free and compulsory education is implemented. It cannot also be said that the Union is entirely without powers for the

discharge of this duty. Legal opinion seems to hold that in the exercise of the admittedly vast powers vested in the Union regarding the allocation and distribution of resources and revenues between itself and the States, it may legitimately discriminate among the States on the basis of the fulfilment of this directive.¹⁰² It may also be constitutional for the Union to use the numerous Central agencies to exert pressure on the States for its fulfilment. The University Grants Commission, for instance, may make its munificence contingent on the fulfilment by the States of the constitutional directive regarding universal education. Some constitutional experts have gone to the extent of suggesting the use of Article 356¹⁰³ in very extreme cases of recalcitrance or failure on the part of the States.¹⁰⁴ The contention is that the directive principles being 'vital provisions of the Constitution', there is no reason why their non-fulfilment should not attract the remedial clauses of the constitution relating to situations 'in which the government of the State cannot be carried on in accordance with the provisions of the Constitution'.^{Take the} again, ^{the} provision in Part XVII of the Constitution regarding facilities to linguistic minorities for instruction in their mother tongue at the primary stage was inserted by the Constitution (Seventh Amendment) Act, 1956. The Article

(350A) reads: "It shall be the endeavour of every state and every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities". The far-reaching nature of this provision, in the context of a federal set-up, is obvious.

Coming to Part III, the interesting case of the Kerala Education Bill shows how the fundamental rights relating to education guaranteed in that Part (Articles 29 and 30) can be a vehicle of Union authority in education which, as it will be presently seen, is a subject exclusively within the legislative jurisdiction of the State. The Bill proposed to take over some schools under state control and to regulate the salaries and appointments of teachers in private schools. The Christian and also the Nayar organisations which ran a large number of private schools in Kerala objected to the Bill on the ground that it invaded the rights of minorities guaranteed in Part III of the Constitution. The Bill was reserved by the Governor, who, constitutionally, is an agent of the President and therefore, of the Central Government, for presidential assent. The bill had finally to be modified before it could be put on the statute-book.¹⁰⁵

The main Constitutional provision regarding education, however, is to be found in the Seventh Schedule, at Entry 11 of List II. The entry reads: "Education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III."¹⁰⁶

The entries of List I and III referred to are as follows:

List I - Union List.

63. The institutions known at the commencement of this constitution as the Benaras Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for -
- (a) professional, vocational or technical training, including the training of police officers; or
 - (b) the promotion of special studies or research; or
 - (c) scientific or technical assistance in the investigation or detection of crime.

66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

List III - Concurrent List

25. Vocational and Technical training of labour.

There obviously is considerable overlapping in the scheme of distribution of legislative power regarding education visualised in the Constitution. Referring to this, Naik writes:

"On a very close examination of all the provisions of the Constitution which have a bearing on education, one cannot help the feeling that there is an element of basic contradiction in the role which the Constitution attempts to assign to the Government of India in education. On the one hand, the Constitution takes the simple stand that education, with all residuary powers, is a state subject except for a few special aspects specified within the Constitution itself. But, the real trouble starts when the enumeration of these 'exceptions' begin".¹⁰⁷

Naik goes on to enumerate these exceptions and then concludes: "These exceptions are so large that they circumscribe the state authority for education very materially..."¹⁰⁸

The most crucial exception made in Entry 11 of the State

List, which as it has been seen is the basic constitutional provision regarding education, is Entry 66 of List I. Of the other exceptions, Entries 63, 64 and 65 of List I relate to certain institutions and agencies and, therefore, pose no difficulty. This is also true about the last exception, namely, Entry 25 of List III, for, this entry attracts provisions of the Constitution relating to concurrent legislation.¹⁰⁹ It is the first exception that present problems of 'harmonious construction'.

The prevailing legal view seems to be that Entries 63 to 66 of List I are 'carved out' of the subject of 'education' and in respect of the subjects of these entries, the power to legislate is vested exclusively in the Parliament, even though they relate to 'education including universities'. In the case of Entries 63 to 65 of List I, once they have been 'carved out' of education, there is no question of their overlapping with Entry 11 of List II for reasons we have already seen. Overlapping is possible only in the case of Entry 66 of List I and Entry 11 of List II. To the extent of such overlapping, the power conferred by the former must, according to existing constitutional law, prevail over the power of the state under Entry 11 of List II.¹¹⁰ In other words, once it is held that a State legislation relates to the coordination and determination

of standards in higher education¹ or would directly affect the power of the Parliament relating to that subject, the State legislation would be invalid, whether or not Parliament has actually exercised its power under entry 66 of List I. The now famous case, Gujarat University V. Shri Krishna, illustrates the principles of constitutional interpretation in this regard.¹¹¹

The Gujarat University Act, 1947, as amended in 1961 made either Gujarati or Hindi or both exclusive media of instruction and examination within the jurisdiction of the Gujarat University. The constitutional point raised before the Supreme Court in the case was whether the State of Gujarat, acting through the Gujarat University, could do this. The Court held, by a majority,¹¹² that the State had no power to do so. Its reasoning ran thus: The power to prescribe an exclusive medium would ordinarily be covered both under "Education including universities" in the State List and, under "Coordination and determination of standards in institutions of higher education" in the Union List. What came under the latter, however, could not at the same time also fall under the former. Further, Entry 14 in the State List expressly reduces¹¹³ the content of the state power reposed therein by adding the words "subject to the provisions of ..."

Thus, held the Court, as soon as it is found that medium of instruction falls under Entry 66 of the Union List (which is explicitly mentioned after the proviso), it logically follows that it is "carved out" from entry 11 of the State List.¹¹⁴

This was the general principle. The Court further held that the power to prescribe an exclusive medium of instruction did in fact fall under Entry 66 of the Union List. The ground for doing so was that it had a "direct bearing and impact" upon coordination and determination of standards in institutions of higher education.

That the Supreme Court in this case turned down as invalid legislation which fell clearly within the powers assigned to the State is important enough; but, what is really noteworthy is that the state law was not invalidated on the basis of any conflict with a Union statute, for, there did not exist any such statute on the question raised in the case. It has been invalidated simply for want of power. Justice Sha, who delivered the majority verdict said :

"The validity of state legislation on university education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be

judged, having regard to whether it impinges on the field reserved for the Union under entry 66. In other words, the validity of state legislation would depend upon whether it prejudicially affects coordination and determination of standard, but (not) not upon the existence of some definite union legislation directed to achieve that purpose"¹¹⁵ (Emphasis added).

What Tripathi, among the numerous jurists who have dwelt on this judgement, has to say on its implications bears reproduction :

"(The reasoning of the Court) threatens the power of the States on 'education' and 'universities' with virtual extinction. Because of what is comprehended in 'coordination and determination of standards' is to be excluded, or 'carved out' from state jurisdiction, the loss may not be confined to 'medium' of instruction, but may extend to courses, syllabi, classification and qualifications of teachers, and, in fact, to any area of policy in regard to higher education worth the name. With the reasoning, perhaps, even secondary education might be brought under the Union on account of its impact on standards of higher education".¹¹⁶

One might add that even primary education can be conceivably so brought under the legislative jurisdiction of the Union.

The most charitable view that can be taken of the judgement, as indeed many constitutional experts have done,¹¹⁷ is that it is an unfortunate aberration. The dissenting opinion on the judgement itself advanced another principle of constitutional interpretation in such cases, the principle of pith and substance.¹¹⁸ The Supreme Court also, not before long after the judgement, had perhaps begun to realise that the majority opinion in the case had gone too far; and, had started the process of restricting its application to the question of medium alone.¹¹⁹ In Chitralakha V. State of Mysore,¹²⁰ for instance, the Court in 1964 rejected the argument, based on the Gujarat University case, that the state could not lay down an oral test, administered through a selection committee, for admission of students to engineering and medical colleges. Such a test, it was argued, would affect 'coordination and determination of standards' in these institutions. The court obviously did not want its reasoning on the earlier occasion to be applied also to procedures of admission.

The Gujarat University case only shows how far one can go in interpreting the existing constitutional provisions regarding education. In all probability the Supreme Court is not likely to persist in the stand it took in that case.¹²¹

But, this does not change the basic position which is that in the case of conflict between union legislation under Entry 66 of List I and that under Entry 11 of List II, union legislation will prevail.

The preceding discussion may be summed up as follows : Though 'education including universities' has been assigned to States as an exclusive head of legislation, the Union has, under Entry 66 of List I, considerable powers of legislation in the area of higher education and research and education in scientific and technical institutions. The Union may also make its presence felt in secondary education through powers devolving on it as an incident of power under Entry 66 of List I. Further, important responsibilities are vested in the union regarding education including the primary level of education, through a number of provisions in the constitution.¹²²

Another conclusion also seems worth recording. Lord Radcliffe in his 1951 Reith Memorial Lectures said of Hamilton that at every page of his arguments in The Federalist he seemed to say :

"Make up your minds as to what you really want; that is the first essential thing. If you really think it best to place this or that branch of your affairs under the authority

of some larger union, then give it frankly the powers it needs to make its control effective. Do not be afraid or half-hearted in what you are doing, or take back with one hand what you give with the other."¹²³

The Indian Constitution, at least in its provisions regarding education, has not been conspicuously heedful of Hamilton's advice.¹²⁴ In saying this, no value judgement, however, is intended.

3.7 SOME OTHER FEDERATIONS IN THE WORLD

At this stage, it may not be entirely inappropriate to turn for a while to some other federations in the world and have a quick look at the educational arrangements in their Constitutions. This should give us a wider perspective on our own constitutional provisions regarding education. The federations chosen here for this exercise are the United States of America, Canada and the Commonwealth of Australia. The choice hardly needs any explanation. The United States of America is generally considered to be the nearest approximation to a 'pure' federation in the classical sense of the term and its Constitution 'the pioneer of its kind'.¹²⁵ As Lipson puts it, when George Washington was inaugurated

President of the United States, something else also was inaugurated with him. This was the principle of a new and a stronger type of union between states, the Federal Union, the like of which was unknown in earlier history.¹²⁶ Education in the American Constitution is, therefore, bound to be of interest. As for Canada and Australia, these are among the most important of the other major federations of the world and their constitutions have, in many ways, influenced our constitution-makers.¹²⁷

(i) United States of America¹²⁸

The United States has had a long tradition of local control of education. Both geographical necessity and political mores fixed the control of education in the local units.¹²⁹ One of the delicate issues with which the Constitutional Convention of 1788 had to deal, therefore, was education. At one point in the drafting of the constitution, education was tentatively included among the subjects under the jurisdiction of the federal government.¹³⁰ This, however, was an arrangement which did not greatly appeal either to the Federalists, who advocated a strong centre or to the anti-Federalists, though for different reasons. The former were opposed to mass education and therefore, also to a national system of education. The latter stood for the

education of the masses, but were¹wary of delegating authority over education to the Federal Government lest it should use it as a means of augmenting its power. Thus, one finds that the first ever federal constitution of the world, the Constitution that 'invented' federalism,¹³¹ does not even mention education. Education, therefore, becomes a State subject by virtue of the Tenth Amendment which reads: "The power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people".¹³² The States, consequently, provide for education in their constitutions, legislate for its support and control, and administer the system so established. What is known as the American system of education is, therefore, fifty distinct state systems, alike, may be, in some respects, but different in many others.¹³³

The only power the Federal Government can be said to have in education is of an 'implied' nature. They are derived from what is usually known as the 'general welfare clause' which appears twice in the constitution. The preamble to the constitution says: "We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general welfare and secure the Blessings of Liberty to

ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."¹³⁴ In Section 8, the clause reads: "The Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States..."¹³⁵

(ii) Canada

The present Dominion of Canada emerged out of a union of British and French colonies. The Union was brought about by the combined pressure of three powerful forces.¹³⁶ An economic depression had struck the maritime settlements of Nova Scotia, New Brunswick, and Prince Edward Island. They sought recovery from its aftermath through a wider political frame-work. Again, a unitary government had proved unworkable for the French and English inhabitants of Quebec and Ontario and they cast about for a more workable governmental set-up. Finally, cool relations with the United States and a determination to hold the West for Canada strengthened the argument for a national authority. Federal-Union seemed an obvious solution to these problems. But the recent experience of the American Civil War and the near dissolution of the American Union led British and Canadian statesmen to the conclusion

that the federal government in Canada must possess more powers than its counterpart in the United States of America. It is because of this that we find that the Canadian Constitution, the British North American Act 1867, takes a position diametrically opposed to the American constitution as regards residual powers. The federal government of the United States was organised on the principle that its powers were delegated to it by the federating states which retained the residue.¹³⁷ The Canadians took the position that powers were delegated to the provinces by the Dominion which reserved for itself the residual powers.

Thus, the Canadian constitution-makers, like their Indian counterparts, had sought to create a strong Centre. It is, therefore, interesting to note that the British North American Act, all the same, assign exclusive jurisdiction over education to provincial legislatures. The relevant clause of the Act reads:¹³⁸

In and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any Right or Privilege with respect to denominational Schools which any Class of Persons have by law in the Province at the Union:

(2) All the Powers, Privileges and Duties at the Union by law conferred and imposed in Upper Canada on the separate Schools and School Trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

(3) Where in any Province a system of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie on the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's subjects in relation to Education:

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this section.

The long provisos contained in the Clause can only be

understood in the background of the cultural mosaic of the Canadian society. Although Canada is officially a bilingual and bicultural society, in the sense of the English and the French being the founding peoples, it is in reality a multi-cultural society, in which peoples from all continents of the world are represented.¹³⁹ This has given rise to acute problems of linguistic and religious minorities.¹⁴⁰ The provisos, as can be easily seen, are intended for safeguarding the interests of these minorities. They do not, therefore, materially change the basic constitutional position regarding education, for, they are not comparable to the "exceptions" made in the Indian constitution to entry 11 of the State List. Education in Canada is, therefore, essentially under the exclusive jurisdiction of the provinces.

(iii) Australia

Australia became a federation only in 1901, which makes it one of the latest 'variations on the federal theme'¹⁴¹. Before 1901, it comprised six self-governing colonies under the British crown. Late in the 19th century it was realised that some form of Union was desirable in Australia and a series of inter-colonial conferences was held. The result was the adoption of the present system in which colonies became states with legislative and executive powers divided

between the central (Australian) and the local (state) parliaments and governments. The constitution which brought about this and is described as 'the political compact of the people of Australia', though drafted by conventions of Australian statesmen, derives its legal force from its enactment by the British Parliament at the request of the American colonies.¹⁴²

Australia does not suffer from any of the cultural, religious and linguistic complications that the Canadians face.¹⁴³ The vast majority of the Australian population are Europeans; the Aborigines are too few and too weak to count for much, politically or otherwise. Again, 95 per cent of the European population is drawn from the British Isles.¹⁴⁴

The constitutional position of education in Australia is the same as in the two federations we have already studied¹⁴⁵ unless we take into consideration, in the case of Canada, the guaranties made to religious, linguistic and other minority groups. Article 107 of the Australian constitution lays down:

107. Every power of the Parliament of a Colony which has become or becomes a State, shall unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from

the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.¹⁴⁶

The powers vested in the Parliament of the Commonwealth are enumerated in Articles 51 and 52, together number 62. Education does not figure among the subjects mentioned under these articles. Thus it is a responsibility of the states.¹⁴⁷

3.8 CONCLUSION

In this chapter, an attempt was made to look into the position of education in the Indian Constitution against the background of the emergence and growth of the idea of federalism in the country. An attempt was also made to review broadly the provisions relating to education in the Constitutions of three other federations, namely, the U.S.A., Canada and Australia. The inevitable conclusion seems to be that the Indian Constitution gives the Federal Government in India more powers than any other major federal constitution of the world, or, in any case, more powers than the ones that have been studied.

In the next Chapter the inquiry will be directed to one of the two major focuses in the present research, namely, the Centre-State financial relations in Indian education.

NOTES AND REFERENCES

1. A.V. Dicey, Introduction to the Study of the Law of the Constitution (9th edition), 1952, London, Macmillan, p.175. It may be noted here that the word 'federation' does not occur in the Indian constitution. Article 1 of the Constitution declares that India 'shall be a Union of States'. But the word 'Union' held no particular significance and did not detract from the federal character of the Constitution, as was explained by Dr. Ambedkar in the constituent Assembly. (See Constituent Assembly Debates, VII, p.43). In fact, in not explicitly using the word 'federation', the Constitution conforms to the tradition set by the majority of federal constitutions in the world. However, the Constitution of the United States and the British North America Act, 1867 use the word.
2. See for example, Abhijit Dutta and Mohit Bhattacharya, "A Functional Approach to Indian Federalism-Case Study of Indian Development", Indian Journal of Public Administration, Vol.XIII, No.2, April-June 1967; and P.R. Dubashi, "Unitary Trends in a Federal System", Journal cited above, vol.VI, No.3, 1960.
3. K.C. Wheare, "India's New Constitution Analysed", Allahabad Law Journal, Vol. XLVIII, No.6, February, 1950. For a strong refutation of Wheare's views, See V.G. Rama Chandran, "Aspects of Federalism" in S.P. Aiyer and Usha Mehta, ^(ed.) Essays in Indian Federalism 1965, Bombay, Allied Publishers, pp.57-58.
4. K.R. Bombwall, The Foundations of Indian Federalism, 1967, Bombay, Asia Publishing House, p.323.

5. This is the sense in which the term is used by most modern writers in the field. See Swarthout and Earnest R. Bartley, Principles and Problems of American National Government (2nd edition), 1965, New York, Oxford University Press, p.89; A.V. Dicey, op.cit., p.157; and K. Santhanam, Union-State Relations in India, 1960, New Delhi, Asia Publishing House, p.8. Also Cf. Subba Rao J., dissenting judgement in State of West Bengal V. Union of India, A.I.R., 1963, S.C. 1241, p.1269.
6. Constituent Assembly Debates, Vol.XL, p.976.
7. These included well-known parliamentarians like Loknath Misra and P.T. Chacko.
8. Russell W. Maddox and Robert F. Euquay, State and Local Government, 1962, Princeton, D. Van Nostrand Company, p.13. see also Santhanam, op.cit., p.2.
9. William S. Livingston, Federalism and Constitutional Change, 1956, Oxford, The Clarendon Press, p.1.
10. Roy E. Jones, The Functional Analysis of Politics, 1967, New York, Routledge and Kegan Paul, p.46.
11. Rajni Kothari, Politics in India, 1970, New Delhi, Orient Longmans, p.101.
12. Cited by Bharati Ray, Evolution of Federalism in India, 1967, Calcutta, Progressive Publishers, p.35.
13. Ibid.
14. Ibid, p.36.
15. Rajni Kothari, op.cit., p.101. It is indicative of the help the founding fathers got in the one-rous task of constitution-making for independent India from thinking on the issue during the preceding decades that thirteen of the nineteen

- rights enumerated in the Motilal Nehru Report were included, without any material change, in the chapters on fundamental rights and directive principles of state policy.
16. S.P. Aiyar, "The Federal Idea in India", in S.P. Aiyar and Usha Mehta (ed.), Essays on Indian Federalism, 1965, Bombay Allied Publishers, p.3.
 - 17 Report of the Indian Statutory Commission, 1929, Vol.II, p.206 cited by S.P. Aiyar, op.cit., p.4.
 - 18 Gwayer and Appadorai, Speeches and Documents on Indian Constitution 1921-47, Vol.I, cited by Bharati Ray, op.cit., p.41
 - 19 S.P. Aiyer, op.cit., p.12.
 - 20 For a detailed discussion of these, see A.B. Keith, A Constitutional History of India, 1600-1935, 1936, London, Methuen.
 - 21 For a highly readable discussion of the Act see K.R. Bomb^wall, op.cit., pp.185-222. For the reaction of national leaders like Pandit Jawaharlal Nehru to the Act, see Jawaharlal Nehru, The Discovery of India 1967(reprint), Bombay, Asia Publishing House, pp.387-389.
 - 22 This is not to suggest that the political basis of the Act and the constitution is the same. On this point, see K. Santhanam, op.cit., p.5.
 - 23 N. Srinivasan, Democratic Government in India, 1954, Calcutta, p.143.
 - 24 Rasheeduddin Khan, "The Regional Dimension", Seminar (164), April, 1973, p.33.
 - 25 Sir John Seeley, The Expansion of England, cited by K.R. Bombwall, op.cit., p.31. In the same vein, John Bright once referred to India as a country "With its twenty different nations ~~and~~ its twenty different languages".

- 26 John Strachey, India, its Administration and Progress (third edition), 1903, London, p.2.
- 27 Amal Ray, Inter-Governmental Relations in India, 1966, London, Asia Publishing House, p.11.
- 28 For centrifugal tendencies in early Indian polity, see K.P. Jayaswal, Hindu Polity: A Constitutional History of India in Hindu Times (Parts I and II), 1943, Bangalore, The Bangalore Printing and Publishing Co., Ltd., pp.359-364.
- 29 Agra University Lectures 1953, cited in William O. Douglas, We the Judges, p.38.
- 30 Myron Weiner, "A Note on communication and Development in India" in Communication and Change in Developing countries by Daniel Lerner and Wilber Schramm (ed.), 1967.
- 31 Jawaharlal Nehru, op.cit., p.62. 'The Pathan of the North-West' can be easily substituted by the 'Sikh of the North' to-day.
- 32 Amal Ray, op.cit., p.10. Also see Indian Institute of Public Administration, "Centre-State Relations - The Issues" in The Union and the States, by S.N. Jain, Subhash C. Kashyap and N. Srinivasan (ed.), 1972, Delhi, National Publishing House, p.1.
- 33 Beni Prasad, The State in Ancient India, cited by K.R. Bombwall, op.cit., p.34.
- 34 K.R. Bombwall, op.cit., p.37.
- 35 This does not mean that regional considerations were entirely ignored by the Muslim rulers. On the contrary, concern was shown for linguistic and socio-cultural homogeneity in the delimitation of provinces. In his memoirs, Tuzk-i-Jehangiri, ^{Jehangir} mentions how his father, Emperor Akbar, was conscious of the fact that provinces should coincide with linguistic-cum-

-cultural regions of India. The over-riding considerations, however, were political and strategic. See Rasheeduddin.Khan, op.cit., p.37.

36. K.R. Bombwall, op.cit., p.37.
37. K.P. Jayaswal, op.cit., p.362.
38. This diversity itself may be due to geographical factors. For a perceptive discussion of the influence of geography on Indian history, see K.M. Panikkar, Geographical Factors in Indian History.
39. Paul H. Appleby, Public Administration for a Welfare State, 1961, Bombay, Asia Publishing House, p.66.
40. Rasheeduddin Khan, "Self-view", Seminar (132), August, 1970, p.22.
41. V.D. Mahajan and Savitri Mahajan, British Rule in India and After (Eighth edition), 1969, New Delhi, Chand and Co., p.304. Interestingly enough, in interpreting this Act, which ostensibly aimed at creating a powerful 'central metropolitan government' in India, the Court of Directors found it necessary to stress the need for a certain measure of devolution of authority in the actual conduct of relationship between the imperial government and the provinces. See K.^R.Bombwall, op.cit., p.38.
42. Section 39, Charter Act, 1833. See V.D. Mahajan and Savitri Mahajan, op.cit., pp.304-305.
43. K. Santhanam, op.cit., pp.2-3. For a brief survey of constitutional developments in India during the British period, see V.D. Mahajan and Savitri Mahajan, op.cit., Chapter XIX, pp.289-425.

44. Amal Ray, op.cit., p.15. For a brief but competent survey of this upsurge, from a Marxist angle, see R.Palme Dutt, India To-day, 1970 (second Indian edition), Calcutta, Manisha Granthalaya, pp.319-353.
- 45 As a device for containing political mobilization, this is not entirely unknown to the newly independent countries of Asia and Africa. See Roger Scott, "The Politics of New States" in Roger Scott (ed.). The Politics of New States, 1970, London, George Allen and Unwin Ltd., p.46.
- 46 Asoka Mehta and Achyut Patwardhan.
- 47 See for instance, Thompson and Garrat, Rise and Fulfilment of the British Rule in India, 1958, Allahabad, p.540.
- 48 A. Krishnaswami, The Indian Union and the States, 1940, Oxford, Pergamon Press, pp.6-7.
- 49 Writing about the Government of India Acts of 1919 and 1935, Morris-Jones observes: "The Acts... effected an important change in Indian political life: they introduced on to the stage the provincial politicians". (Parliament in India, 1957, London, p.17.) Years later, at the dawn of freedom, many political writers were to make dismal prophecies about the future of the Indian nation on the basis of the ascendancy of these 'regional elites' in the states. (See for instance, Selig S. Harrison, India: The Most Dangerous Decades, 1965 (reprint), Madras, Oxford University Press, esp., Chapter III, pp.55-78.)
- 50 It may be noted, en passim, that once the provinces had acquired a distinct sub-national identity and been given representative government, linguistic states (the 'federating' units of the Indian Union to-day) was only a logical outcome, The

common man would not have been able to derive much benefit out of provincial autonomy unless the provinces were also linguistic. See for the emergence of linguistic states, N.C. Roy, "The Growth of Linguistic States in the Indian Federation" in S.P. Aiyar and Usha Mehta (ed.) op.cit., pp.210-222.

- 51 There are many authoritative discussions available on the two problems. For one interesting and fairly comprehensive discussion, see R. Palme Dutt, op.cit., pp.438-481.
- 52 Percival Spear, "The Position of the Muslims Before and After Partition" in Philip Mason (ed.) India and Ceylon: Unity and Diversity, 1967, London, Oxford University Press, p.31.
- 53 R. Palme Dutt, op.cit., p.455.
- 54 Lord Elphinstone, the then Governor of Bombay, had written in a minute dated May 14, 1859; "Divide et impera was the old Roman motto and it should be ours". Cited by B.M. Sharma, The Republic of India, 1966, Bombay, Asia Publishing House, p.437.
- 55 Rasheeduddin Khan, op.cit., p.24. For an informative discussion of the Muslim problem in the context of Indian nationalism, see A.R. Desai, Social Background of Indian Nationalism, (Fourth edition) 1966, Bombay, Popular Prakashan, pp.390-417.
- 56 Part of the blame for the success of the 'divide and rule' policy of the British must be laid at the doors of the nationalist leadership of the country. See R. Palme Dutt, op.cit., pp.469-481.
- 57 To call them 'states' is really a misnomer. None of them possessed the basic attribute of a modern state, namely, sovereignty. See R. Palme Dutt, op.cit., pp.438-439.

- 58 K.V. Rao, Parliamentary Democracy of India, 1965, Calcutta, The World Press Private Ltd., p.297.
- 59 A.R. Desai puts it rather mildly, almost euphemistically when, speaking about the princely order, he says: "Its very survival was due to the decision of the British government to perpetuate it for political reasons". A.R. Desai, op.cit., p.181.
- 60 Cited by R. Palme Dutt, op.cit., p.440.
- 61 K.R. Bombwall, op.cit., pp.54-55.
- 62 See R. Palme Dutt, op.cit., p.448.
- 63 E. Thompson and G.T. Garratt, op.cit., p.573.
- 64 See p.14, ante
- 65 The controversy about the Indian Constitution is not on this primacy of the Centre. It is on whether the large powers bestowed on the centre does damage to the federal principle. See K.R. Bombwall, op.cit., p.323. Viewed from this angle, this whole controversy reduces itself to a question of labelling.
- 66 The Cabinet Mission Plan was the last attempt to solve the constitutional problem of India on the basis of a federation with a weak centre and large autonomy to the units. The first report of the Union Powers Committee had been prepared on the basis of this Plan.
- 67 Constituent Assembly Debates, Vol.V, p.39. The report itself said: "Now that partition is a settled fact,... it would be injurious to the interests of the country to provide for a weak central authority..." (Ibid, Appendix A, p.58).
- 68 Sardar Patel during the Constituent Assembly discussions. Constituent Assembly Debates, Vol.X, p.161.

- 69 Ibid, p.164.
- 70 P.K. Sharma, Political Aspects of States Reorganisation in India, 1969, New Delhi, Mohuni Publications, p.246.
- 71 Rajni Kothari, op.cit., pp.109-110.
- 72 Russell W. Maddox and Robert F. Fuquay, op.cit., p.15.
- 73 Constituent Assembly Debates, Vol.VII, p.42.
- 74 Ibid, p.335. An instance of such augmentation of federal powers through judicial interpretation in USA in the doctrine of implied powers propounded by the United States Supreme Court in 1819 in McCulloch.V. Maryland. Wide application of this doctrine has in no small measure been responsible for the large broadening of the scope of federal powers in later years in the United States.
- 75 The amendment moved by K.T. Shah in this direction is an example. See Ibid, p.399.
- 76 See pp.3-4, ante.
- 77 p.3, ante.
- 78 Thus Dicey says : "The distribution of powers is an essential feature of federalism". Law of the Constitution, cited by B.M. Sharma, op.cit., p.391 (foonote).
- 79 Dr. Durga Das Basu, Annotated Constitution of India (second edition), 1972, Calcutta, S.C. Sarkar and Sons, p.237.
- 80 Article 246 (1)
- 81 Article 246 (2)
- 82 Article 246 (3)
- 83 Article 248. Entry 97 of the Union List also vests residuary powers with the Union. The item reads in part: "Any other matter not enumerated in List II or List III..."

- 84 For a brief, but competent discussion of these, See B.M. Sharma, op.cit., pp.391-394.
- 85 In his letter forwarding the Second Report of the Union Powers Committee, Nehru said: "In the matter of distributing of powers between the Centre and the Units, we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act, 1935..." (Constituent Assembly Debates, Vol.V, p.60). It may be interesting here to note that the three lists in the 1935 Act themselves were based on the Devolution Rules made under section 45-A of the Government of India Act of 1919. The Rajmannar Committee appointed by the Government of Tamil Nadu in 1969 to go into the problem of Centre-State relations meaningfully makes a pointed reference to this lowly origin of the three lists. See Government of Tamilnadu, Report of the Centre-State Relations Enquiry Committee, 1971, Madras, p.5.
- 86 K.R. Bombwall, op.cit., p.276.
- 87 Originally only 97. The list was extended by the Constitution (Sixth) Amendment Act, 1956 through the addition of another item as entry 92A.
- 88 This is, however, not to forget that the entries in the list (as also those in the other two lists) are of an enabling character. They do not prescribe any duty to legislate. (State of Bihar V. Kameshwar, A. 1962 S.C. 252).
- 89 Article 254. For case law on this point, see Dr. Durga Das Basu, op.cit., p.243. It may also be well to remember here that many people like Santhanam have argued that several items included in the Concurrent List are really not of national concern. See K.Sanathanam, "The Demand for

- Greater Autonomy" in S.N. Jain et al. (ed.), The Union and the States, 1972, New Delhi, National, p.77.
- 90 The fears of this happening were indeed expressed in the Constituent Assembly by such perspicacious members as Shri K. Santhanam. See Constituent Assembly Debates, Vol.VII, p.263.
91. K.V. Rao, op.cit., p.318.
- 92 Ibid.
- 93 Education itself, as we shall later see, is an instance of this.
- 94 K.V. Rao, op.cit., p.318.
- 95 Words enclosed in parenthesis were substituted by the Constitution (Seventh Amendment) Act, 1956, S.28, for "Entry 52".
- 96 Entry 7 and Entry 52 of the Union List read as follows:
 "7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war'.
 "52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest'.
- 97 Footnote 85, ante
- 98 This is not to forget that there are those who argue that the inclusion of education in the State List is a measure of its relative lack of importance in the scheme of things of the founding fathers. See S. Madhava Menon, "Vidyabhya-savum Bharana Khadanayum" (Malayalam) Vidyalokam, Vol.II, No.3, p.10.

- 99 The most important distinguishing feature of the Indian Constitution, not to be seen in other constitutions except those of Ireland (Eire) and Burma, is Part IV of the Constitution entitled 'Directive Principles of State Policy'. The provisions of this Part embody the philosophy of the constitution. They are, however, not justiceable.
- 100 The Articles in the three Parts of the Constitution referred to here are: Articles 29 and 30 (Part III); Articles 41,45 and 46 (Part IV); and Article 350A (Part XVII), inserted by an amendment in 1956.
- 101 Article 12. Article 36 makes this definition of 'the State' applicable to Part IV of the constitution also.
- 102 See P.K. Tripathi, "Legislative Relations between the Union and the States and Educational Planning" in G.S. Sharma (ed.), Educational Planning: Its Legal and Constitutional Implications in India, 1967, Bombay, N.M.Tripathi Pvt.Ltd., p.11.
- 103 The article, as the marginal note to it indicates, relates to the 'failure of constitutional machinery' in the state.
- 104 See for instance, P.K. Tripathi, op.cit.
- 105 See K. Santhanam, op.cit., p.24. Also see Alice Jacob, "Centre-State Governmental Relations in the Indian Federal System" in S.N. Jain et al (ed.), op.cit., p.30, on the factual point whether the Bill was reserved for presidential assent by the Governor on his own or/on the advice of the Kerala Ministry.
- 106 This entry and the entries in the other two lists mentioned in it do not exhaust all the constitutional provisions regarding education. There are a number of other entries in the three legislative lists which would affect education considerably. For these, see P.K. Tripathi, op.cit., pp.12-13. They are, however, not very relevant to our purposes.

- 107 J.P. Naik, "The Role of the Government of India in Education", in NCERT, Educational Studies and Investigations, Vol.I, 1962, New Delhi, p.9.
- 108 Ibid.
- 109 These provisions are contained in Article 254. For a competent discussion of the meaning of the principle of repugnancy which this Article lays down and case law relating to it, see Dr. Durga Das Basu, op.cit., p.254.
- 110 Dr. Durga Das Basu, op.cit., p.399.
- 111 A.I.R. 1963, S.C. 703.
- 112 Subba Rao J. dissented from the majority judgement. See p.36, ante.
- 113 See p.19, ante.
- 114 P.K. Tripathi, op.cit., p.14.
- 115 A.I.R. 1963 S.C., p.716.
- 116 P.K. Tripathi, op.cit., pp.14-15.
- 117 Ibid, p.14.
- 118 The doctrine of pith and substance lays down that if an enactment substantially falls within the powers expressly conferred by the constitution upon the legislature which enacted it, it cannot be held to be invalid merely because it accidentally encroaches upon matters assigned to another legislature. See Manmohan V. State of Bihar, A.1961, S.C., 189.
- 119 P.K. Tripathi, op.cit., p.17.
- 120 A.I.R. 1964 S.C. 1823.

- 121 As in the U.S.A. the judiciary in India is empowered to revise its opinion (Article 137). That this constitutional provision is made ample use of is shown by, for instance, case law on fundamental rights (On this, see K.V. Rao, op.cit., 146-232). The high rate of turn-over of judges in India also contributes in no small measure to the 'transcience' of judicial interpretations. This incidentally also explains why we do not have any 'Marshall Doctrine' as in the U.S.A. or any 'Griffiths Doctrine' as in Australia.
- 122 Attention is confined here to express provisions of the constitution. A large variety of 'derived' powers (e.g. implicit, resultant and inherent powers) are not taken into consideration. (For these, as applied to the American constitution, see 'Russell W. Maddox et al, op.cit., pp. 14-15). Naik, in his discussion of the role of the government of India in education 'as it ought to be', seems to lean heavily on some of these 'derived' powers. See J.P. Naik, op.cit., pp.20-31.
- 123 Lord Radcliffe, The Problem of Power, 1952, London, C books (Collins), p.63. Hamilton was co-author with Madison and Jay of The Federalist papers.
- 124 Naik has sought to explain this. He postulates three reasons: (i) That the Indian Constitution has sought to create a strong centre; (ii) That states will not be able to develop education unless the centre played a 'prominent' role in it; and (iii) That the role of the federal government in other federations was growing 'in certain directions which it would be very advantageous for India to copy'. (J.P. Naik, op.cit., p.20). Critics would characterise the explanation as basically apologetic.

- 125 Lord Radcliffe, op.cit., p.61. The latter fact has led Radcliffe to consider the making of the American constitution to be 'one of the most important events in modern history'. (Ibid)
- 126 Leslie Lipson, The Great Issues of Politics, 1973 (4th edition) Bombay, Jaico Publishing House, p.325.
- 127 In a similar exercise, Naik has included the U.S.S.R. also. (See J.P. Naik, op.cit., pp.19-20) This does not seem to be appropriate, for, the one-party system in that country, the monolithic nature of the party, and the peculiar nature of the relation between the party and the State place the USSR in an altogether different class.
- 128 In the comparative study that follows, the interest is obviously in constitutional provisions. The growing trend in all federations of a shift in educational authority from the 'periphery' to the Centre is not taken into account here. In the case of America, there have been several studies of this trend. Among these, Hales, though published in midfifties, is still valid and is one of the most competent. See Dawson Hales, Federal Control of Public Education, 1954, New York, Teachers College, Columbia University.
- 129 Walter D. Cocking and Charles H. Gilmore, Organisation and Administration of Public Administration, 1938, Washington, U.S. Government Printing Office, pp.9-10.
- 130 S.E. Frost, Jr., Introduction to American Education, 1962, New York, Doubleday and Company Inc., p.246.
- 131 Leslie Lipson, op.cit., p.324.
- 132 S.E. Frost, Jr., op.cit., p.246.
- 133 Ibid, p.233.

- 134 Ibid, p.247.
- 135 Ibid.
- 136 Leslie Lipson, op.cit., p.326.
- 137 See p.51, ante.
- 138 Cited by Joseph Katz, Education in Canada, 1974, Hamden (Connecticut), Archon Books, pp.24-25.
- 139 Ibid, p.21.
- 140 J.P. Naik, op.cit., p.15.
- 141 Leslie Lipson, op.cit., p.326.
- 142 Australian Information Service, Government (Reference Paper), 1973, (Place of publication not indicated), p.3.
- 143 See p.56, ante.
- 144 See, Australian Information Service, Australia: Handbook 1973, Sydney, pp.42-49.
- 145 Naik, in his study of the role of the federal government in education in Australia says: "Australia is an example of the weakest role that a federal government can ever play in education" (J.P. Naik, op.cit., p.14). Since, the author does not, in his study, make a consistent distinction between the 'normative' role of the federal governments as envisaged in their constitutions and their actual role, he is obviously referring here to the former.
- 146 Commonwealth of Australia, The Constitution (as altered to 31 August, 1967), 1967, Canberra.
- 147 See also, Philip E. Jones, Education in Australia, 1974, Hamden (Connecticut), Archon Books, p.100.