CONSTITUTIONAL SCHEME FOR DISTRIBUTION OF REVENUE BETWEEN CENTRE AND STATES

(Constitutional law – II)

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INDEX OF CONTENTS

SR NO	TOPIC	PAGE NO
1	Financial relations 1. General provisions 2. Tax vis-a-vis fee 3. Doctrine of territorial nexus	5
2	Restrictions 1. Sale or purchase of goods outside state 2. Sale or purchase of goods in the course of import and export 3. Sale or purchase of goods of special importance	12
3	Consolidated and contingency funds 1. Consolidated fund 2. Contingency fund 3. Public account	18
4	Distribution of revenue 1. Duties levied by union but collected and appropriated by states 2. Taxes on services 3. Taxes levied and collected by the union but assigned to the states	24

	4. Taxes levied and distributed between the union and the states 5. Taxes on profession, trade, calling and employments 6. Procedure 7. Grants 8. Specific purpose grant 9. Savings	
5	Finance commission 1. Composition 2. Duties 3. Procedure 4. Immunity of instrumentality 5. Exemption of property of the union from state taxation 6. Exemption of property and income of state from union taxation 7. Privy purses 8. Borrowings 9. Power of union to borrow 10. Power of states to borrow 11. Power of union to make loans	39

	12. Power of states to raise loans 13. Centre-state relation-an evolutiom 14. Sarkaria commission recommendations on financial relations.	
6	Conclusion	51
7	Bibliography	53

Chapter 1

FINANCIAL RELATIONS

In a federation since there are two governments, finance touches the content and working of a federal polity and is a prerequisite of good government. Hence, it is necessary that financial resources between the centre and the states are allocated in such a way that there exists equilibrium between the function and resources at every level. Two important features of a federation are firstly, a complete separation of central and state taxing powers and secondly, transfer of funds from centre to states.

The financial relations can be discussed under the following heads.

1. General provisions
2. Restrictions
3. Consolidated and Contingency Funds
4. Distribution of Revenue
5. Finance Commission
6. Miscellaneous provisions

GENERAL PROVISIONS

Article 265, which deals with the financial provisions, states

265. **Taxes not to be imposed save by authority of law**-No tax shall be levied or collected except by authority of law.

Analysing the above provision, it can be deduced that for an imposition of the tax, following conditions must be fulfilled.

1. Tax can be levied or imposed by the authority of law
2. It should be within the legislative competence of legislature imposing tax.
3. The procedure for imposing the liability to pay tax must be strictly compiled with
4. The law should not be prohibited by a particular provisions like Articles 276, 285 etc or be contrary to Part III of the constitution

No levy can be imposed either by executive action[1] or by resolution of houses.[2] Ones a tax falls within the legislative competence of the enacting legislature, the motive and reasons for imposing it do not affect its validity[3].

In **K.T. Moopil Nair V State of Kerala**, [4]it was held that if provisions, which prescribes the procedure of levy of tax, are contrary to Articles 19(1)(f), they will be struck down. **In Synthestics and Chemicals Ltd. V. State of U.P**,[5] it was held that the authorisation made by the statute to levy must be express. Taxing power cannot be derived from the delegation of mere regulating power, even though the tax was within the competence of the legislature which made the delegation. The power to tax is not incidental or ancillary to the power to legislate on a matter.

[1] Bengal Immunity Co.Ltd v. State of Bihar, AIR 1955 SC 661: (1955) 2 SCR 603
[2] State of Kerala v. K.P Govindam, (1975) I SCC 281: AIR 1975 SC 152
[3] Municipal Council, Kota v. Delhi Cloth and general Mills Co.Ltd, (2001) 3 SCC 654: AIR 2001 SC 1060
[4]AIR 1961 SC 522: (1961) 3 SCR 77
[5] (1990) I SCC 109 : AIR 1990 SC 1927

In New India Industries Ltd v. Union of India[6], it was held that tax illegal levied must be refunded. Doctrine of "Unjust enrichment" has to be applied after having regard to the facts of each case. The tax paid by the assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend Article 265 of the constitution.[7]

Held in **Vodafone International Holding BV v Union of India,**[8] that in a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment, equity about a tax, nor is equitable or purposive construction of words in taxing statute permissible. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. Charging section has to be strictly construed.

TAX VIS-A-VIS FEE

A tax and fee is differentiated in three Lists in the Seventh schedule of the constitution. The union and state Lists have several entries relating to taxes in various forms whereas for fees, an entry is given at the end of each List.

A fee may be levied as incidental to legislation with respect to any entry; no taxes can be imposed by virtue of the general legislative power. **In Commr. Hindu religious**

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[6]AIR 1990 Bom 239

[7] CIT v. Shelly Products, (2003) 5 SCC 461: AIR 2003 SC 2532

[8] (2012) 6 SCC 613. Also see, Mathuram Agarwal v. State of M.P, (1999) 8 SCC 667: AIR 2000 SC 109.

<u>Endowment v Sri Lakshmindra Thirtha swamiar of Sri Shirur mutt,</u>[9] it was said that tax and fee both are compulsory exactions of money by public authorities who enforce payment by law. A tax is levied as part of common burden; fee is a payment for special benefit. Whereas no tax is levied outside the tax entries in a List, fees can be levied in respect of a non-tax entry as well.

Thus, tax

1. Is compulsory exaction of money by public authority (essence is compulsion)
2. Meets general expenses of the state, (part of common burden, depending on the capacity to pay) and
3. Does not confer special benefit to the taxpayer (imposition is for public purpose)

And fee is

1. Payment for special services rendered
2. For the benefit of those, who make payments and
3. Payments made are kept apart or specifically appropriated for that purpose and not merged with the general revenue

<u>In Secunderabad Hyderabad hotel owners Assn. V. Hyderabad Municipal Corpn,</u>[10] it was held by the Supreme Court that though the element of quid pro quo is necessary in order to determine whether license fee is tax or fee but it is not essential

[9] AIR 1954 SC 282: 1954 SCR 1005

[10] (1999) 2 SCC 274 : AIR 1999 SC 635

in cases where the license fee is merely regulatory or compensatory. Whether fee is charged for rendering specific services, a certain element of quid pro quo must be there between the services rendered and the fee charged so that the license fee is commensurate with the cost of rendering the service, exact arithmetical equivalence is not expected. The fee, which is charged for regulation of such activity, would be validly classified as a fee and not a tax.[11]

A fee being a levy in consideration of rendering service of a particular type, correlation between the expenditure incurred by the state and the levy must undoubtedly exist. But a levy must not be regarded as tax merely because of absence of uniformity in its incidence or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of services as others,[12]

Held in **Dewan Chand Builder & Contractors v. Union of India**,[13] that true test to determine character or nature of a levy is the primary object of the levy and the essential purpose intended to be achieved thereby.

In state **of U.P v. Vam Organic Chemicals Ltd,**[14] the court held that there should be a reasonable relationship between levy of the fee and service rendered. When there is no such correlation, the levy, despite its nomenclature, is in fact a tax.[15]

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[11] Om Parkash Agarwal v. Giri Raj Kishori, (1986) I SCC 722: AIR 1986 SC 726

[12] Sona Chandi Oal Committe v. State of Maharastra, (2005) 2 SCC 345: AIR 2005 SC 635

[13] (2012) I SCC 101: (2012) 1 SCC (L&S)I

[14] (2004) I SCC 225: AIR 2003 SC 4650

[15] Corpn. Of Calcutta v. Liberty Cinema, AIR 1965 SC 1107: (1965) 2 SCR 477

Article 285 gives exemption of property of the Union from State taxation and article 289 gives exemption of property and income of the state from union taxation. The two articles of the constitution can be covered under the doctrine of immunity of instrumentality which was first propounded in the US case of **McCulloch v. Maryland.**[16] In this case the supreme court of US held that state had no power to levy a tax on the federal government's properties from federal taxation.

Extending this principle to India, article 284 declares that the property of the union shall be exempt from all taxes imposed by a state or any authority within a state. Parliament can under clause (i), remove this ban to permit a state to tax the property of Union, either wholly or in part. This is subject to exception in clause (2), where property was taxable immediately before the commencement of the constitution.

In **International airport Authority of India v. MCD**,[17] it was held that property owned by a government company or a statutory corporation, which has a corporate personality of its own, cannot be said to be property of the Union and may, therefore, be liable to State or municipal taxation.

Similar exemption is given to the property and income of a state from Union taxation under Article 289. **In Sea Customs Act, re**,[18] it was held that the immunity granted to the state in respect of Union taxation under this article does not extend to duties of customs, including export duties or duties of excise. The court further said

[16] 4 LED 567 : 17 US (4 wheat) 316 (1819)
[17] AIR 1991 Del 302
[18] Sea customs Act, S.20 (2), re, AIR 1960(1964)3 SCR 787.

......reading Article 284 and its complementary Article 285, together, the intention of the constitution makers was that article 285 would exempt all property of the union from all taxes on property levied by a state or by any authority within the state, while article 284 contemplates that all property of the states would be exempt from all taxes on property which may be leviable by the Union. Both the articles in our opinion are concerned with taxes directly either on income or on property and not with taxes which may indirectly affect income or property.

DOCTRINE OF TERRITORIAL NEXUS

In determining the validity of sales tax legislation, the doctrine of territorial nexus was applied by the Supreme Court in **TISCO Ltd. V. State of Bihar**.[19] It was laid down that this doctrine does not impose tax but indicates circumstances in which tax can be imposed in a particular case.[20]

[19] AIR 1958 SC 452:1958 SCR 1355

[20] State of A.P v. NTPC Ltd, (2002) 5 SCC 203: AIR 2002 SC 1895

Chapter 2

RESTRICTIONS

The State has power to levy tax on the sale and purchase of goods, other than newspaper bur certain restrictions have been imposed on the power of the state to impose sales tax. These restrictions can be studied under the following heads.

Restrictions on sale or purchase of goods

1. Outside the state
2. In the course of import, export
3. In the course of interstate trade or commerce declared by parliament by law to be special importance and
4. Those specified in Article 366

Article 286 imposes certain restrictions on the state legislatures with respect to sales tax laws.

Parliament as well as state legislatures are vested with the powers to make laws with respect to taxes on the sale or purchase takes place in the course of inter state trade or commerce, the power to tax vests in Parliament except on newspaper. The Supreme Court overruling its view in **the State of Bombay v. United motors (India) Ltd[21] (United Motors) held in Bengal immunity Co. Ltd v. State of Bihar**,[22] that no

[21] AIR 1953 SC 252: 1953 SCR 1069

[22] AIR 1955 SC 661: (1955) 2 SCR 603.

state, including delivery state, was competent to impose sales tax on goods in the course of inter-state trade or commerce during any year unless parliament lifted ban. Article 286 has been included in the constitution in the interest of national economy. However, with the constitution Act, 1956, it has been clearly laid out that taxes on sale or purchase of goods in the course of inter-State trade or commerce is expressly within the purview of legislative jurisdiction of parliament.

Let us now deal with the restrictions on sale or purchase of goods in detail.

SALE OR PURCHASE OF GOODS OUTSIDE STATE

By constitution Act 1956, the power was given to parliament to formulate principle for determining, when sale or purchase takes place in the course of inter-state or commerce, or in the course of export or import, or outside State, so that the legislative spheres of parliament and state legislatures are clearly demarcated.

The amendment also added entry 92-A to List I. The effect of these modifications was that the powers to tax inter-state sale or purchase belong to Centre.

A sale or purchase is composed of many ingredients, for example, existence of goods forming the subject-matter of a sale, agreement to sell, passing of the title or transfer of ownership in the goods, delivery of goods and payment of the extra price. Each of these ingredients take place within one state, the sale is completely intra-State and the State concerned has plenary power to tax the same. On the other hand, when all these ingredients take place outside a state, the sale is completely outside the state and it

cannot levy any tax on it. Difficulties, however, arise when these ingredients take place not in one but several states. Applying the doctrine of territorial nexus in such a situation, each of these states may levy tax on the sale, making the ingredients happening there as the taxable event. Before 1956, taxes on the sale or purchase in the course of interstate trade or commerce were within the purview of the legislative jurisdiction of the states but the power of the state legislature in this behalf was restricted by clause (2) of Article 268 because no law of a state could impose a tax on the sale or purchase of any goods in the course of interstate trade or commerce unless parliament by law provided otherwise.

The Supreme Court in the **Bengal Immunity case**[23], overruling its earlier decision in **united motors**,[24] had held that no state, including the delivery state would be competent to impose sales tax on goods in the course of interstate trade or commerce unless Parliament lifted the ban. Now under the Central sales tax Act, 1956 every dealer is liable to pay tax on the sales effected by him in the course of interstate trade or commerce during any year. The tax payable by any dealer under the Central act is levied and collected in India in the same manner and through the same authorities as are empowered under the sales tax law of the appropriate state.

In **Associated Cement Companies ltd v. CST,**[25] it was held that for the purpose of clause (a), a sale or purchase shall be deemed to have taken place in the state in which

[23]AIR 1955 SC 661: (1955) 2 SCR 603

[24] AIR 1953 SC 252 : 1953 SCR 1069

[25] 1991 Supp (I) SCC 251: AIR A991 SC 1122

the goods have actually been delivered as direct results of such sale or purchase for the purpose of consumption in that state, notwithstanding the fact that under the general law relating to sale of goods, the property in the goods has by reason of such sale re purchase, passed in another state.

SALE OR PURCHASE OF GOODS IN THE COURSE OF IMPORT AND EXPORT

In the interest of national economy, it becomes essential to protect foreign trade from being exposed to indiscriminate taxing. Article 286 prohibits the state from imposing the sales tax on sale or purchase of goods in the course of export and import.

Section 5, central sales Tax Act, 1956 defines such sale. A sale or purchase shall be deemed to have taken place in the course of import of goods into the territory of India, if

1. Such sale or purchase occasions such import, for example, a dealer in cashew nuts at madras purchases cashew nuts from an agent of an Africa firm and as a result of the sale, goods are dispatched from Africa for import into India,
2. The sale or purchase takes place by transfer of documents of title to the goods then only if at the time of such sale or purchase the goods have not crossed the customs frontiers of India. For example, an Indian importer places an order with an overseas merchant for the supply of goods. The goods are shipped and the shipping documents are sent by mail and presented to the Indian importer

by the overseas merchants through his bank in India. The importer after receiving the documents, transfers the goods to another merchant when the goods are outside the customs frontier of India. It is a sale which takes place in the course of import and therefore, exempt from liability to sales tax.

Whether a sale has occasioned the export or not is a question of fact to be decided in the context of each case. **In Coffee Board v. CTO**[26] it was held that the sale of coffee by the coffee Board to its registered exporter under the terms and conditions prescribed by the rules framed by the Coffee Board was not a "sale in the course of export" within the meaning of Article 2869(r)(b) read with Section 5(i) Central Sales Tax Act 1956. The court said that the phrase "sale in the course of export" comprises of three essential namely

1. There must be a sale
2. That goods must be actually exported, and
3. That the sale must be a part and parcel of the export.

In **SAIL v. State of Orissa,**[27] the Supreme Court held that a state cannot, by law, impose or authorities the imposition of a tax on the sale or purchase of goods, where sale or purchase takes place outside the state as in the course of import of goods into or export of goods out of territory of India. Therefore, Section 13-AA, Orissa Sales Tax Act 1947 which provides for deduction at source from payments made to works

[26] (1969) 3 SCC 349: AIR 1971 SC 870

[27] (2000) 3 SCC 200: AIR 2000 SC 946

contractor, is unconstitutional and invalid being beyond the powers of State Legislature because levying sales tax on inter-State sales, outside sales, or sales in the course of import, is outside the powers of state legislatures.[28]

SALE OR PURCHASE OF GOODS OF SPECIAL IMPORTANCE

Parliament is empowered to lay down restrictions and conditions with regard to tax levied by a state law on sale or purchase of goods declared by parliament to be of special importance. Section 14 and 15 central Sales Tax Act 1956 is relevant in this regard. Section 14 contains list of goods of special importance and Section 15 contains the restrictions on taxation of such goods, that a tax shall be levied only on the last sale or purchase inside state.

According to clause (29-A) Article 366, a State law shall be subject to restrictions and conditions, as parliament by law specifies. This clause has been introduced by the constitution (46th Amendment) Act 1982.

[28] State OF A.P v. NTPC Ltd, (2002) 5 SCC 203 : AIR 2002 SC 1895

Chapter 3

CONSOLIDATED AND CONTINGENCY FUNDS

CONSOLIDATED FUND

In England parliament left the king free, to collect and spent taxes on purposes other than those for which the king had asked it. Parliament retained no control after having voted the taxes. At a later state, parliament started to follow the procedure of levying a tax and appropriated its proceeds to a specific purpose. The result was that when it came to passing the Budget, practically no money was left for general purposes. Thus, it becomes necessary to collect into one fund, all relevant raised by taxes or received in other ways, without being appropriated to any particular purpose, so that when parliament came to decide upon the Budget, it had with it a fund, which it could disburse. Thus, is the concept of single unified account for all government i.e. the consolidated fund. Article 266 envisages the formation of consolidated fund of India at the national level and consolidated fund of the state at the state level. It states

266. Consolidated funds and public accounts of India and of the states **.** (1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled “the Consolidated Fund of India”, and all revenues

received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

The Consolidated Fund of India, thus, is formed of

1. All revenues received by Government of India
2. All money raised by loans, and
3. All money received in repayment of loans

The Consolidated Fund of State is formed of

1. All revenue received by the state
2. All moneys raised by loans,
3. All money received in repayment of loans

CONTINGENCY FUNDS

Article 267 envisages the establishment of contingency Fund of India and States. It lays

267 Contingency fund -(1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under article 115 or article 116.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor [29]***of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206.

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[29]The words of " Rajpramukh" omitted by the constitution (7th Amendment) Act 1956, S. 29

The contingency Fund is for meeting unforeseen expenses, at the disposal of President to be subsequently authorised by the president at the National level, and then Governor at the State level.

CUSTODY OF CONSOLIDATED FUNDS, CONTINGENCY FUNDS AND MONEYS CREDITED TO THE PUBLIC ACCOUNTS

Custody of Consolidated Funds, Contingency Funds and moneys credited to the public accounts shall be regulated by the rules made by the President, or the Governor, as the case may be. This is given under Article 283 of the constitution which states.

283 custody, etc of consolidated funds, Contingency Funds and moneys credited to the public accounts-(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys there from, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the

State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor 1*** of the State.

PUBLIC ACCOUNT

Apart from Consolidated Fund of India and States, there is a public account of India envisaged under Article 266(2) which states

266. Consolidated Funds and Public accounts of India and of the States-

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

In this public account are

1. Credited all public money, other than those put in consolidated fund
2. All money received by or deposited with any officer employed in connection with the affairs of the union or state, as the case may be and
3. All moneys received or deposited with the Supreme Court to the credit of any cause, matter, account or person,

This is as per the provisions of Article 284 which states

284 Custody of suitor's deposits and other moneys received by public servants and courts-All moneys received by or deposited with—

(*a*) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or

(*b*) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or the public account of State, as the case may be.

No appropriation Act is required to draw money out of this account as the payments made into this fund are largely in the nature of banking transactions.

Chapter 4

DISTRIBUTION OF REVENUE.

The problem of smooth inter-governmental financial relationship does not end in a federation, with allocating taxing power between the Centre and the state, as the scheme does not create an equilibrium between the responsibilities and resources. The constitution makers, therefore, created an equilibrium between state functions and resources by making provisions for transfer of a part of central revenue to state through not sharing and grants-in-aid.

Distribution of revenue between Union and States may be studied under the following heads

1. Duties levied by the Union but collected and appropriated by states
2. Service tax levied by union, collected and appropriated by Union and states
3. Taxes levied and collected by union but assigned to States
4. Taxes levied and distributed between Union and states

DUTIES LEVIED BY UNION BUT COLLECTED AND APPROPRIATED BY STATES

This issue is dealt with under Article 268 of the constitution which runs as

268. Duties levied by the Union but collected and appropriated by the States.- (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as

are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(*a*) in the case where such duties are leviable within any[30] [Union territory], by the Government of India, and

(*b*) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

Under this category are included taxes which are levied by the Union but are collected and utilised by the states. They are stamp duties and duties of excise on medicinal and toilet preparation. These do not form the part of consolidated fund. Only for the legislative purpose, these are included in the union List but are collected and appropriated by the states for their own purposes under the central law.

TAXES ON SERVICES

Article 268-A states that taxes on services levied by government of India will be collected and appropriated by the government of India and the states. The principles

[30] Subs. By the constitution (7th Amendment) act 1956, S. 29 and Sch, for "state specified in Part C of the First Schedule"

for collection and appropriation by the Government of India and the states shall be in accordance with the principles laid down in the act of parliament.

In **All India Federation of Tax Practitioner v. Union of India** [31](Tax Practitioners) it was held that it is not correct to say that the state legislation alone has an absolute jurisdiction and legislative competence to levy service tax which was a tax on profession, a subject covered by entry 60 of list II. It is true that the entries in the seventh schedule are legislative heads and should be given widest interpretation. However, there are two groups of entries referred in each of the three lists in the seventh schedule. In list I, entries referred to several matters over which Parliament has authority to legislate. An examination of two groups of entries show that while the main subject of legislation finds place in the first group general entries, a tax in relation thereto is separately mentioned in the second group tax entries. Thus, taxation is not intended to be compromised in the main subject, in which an extended construction can be given, as that test cannot be applied to taxation. In the present case, levy of service tax on chartered accountants, architects falls on the activity, which is the subject-matter of service tax.

TAXES LEVIED AND COLLECTED BY THE UNION BUT ASSIGNED TO THE STATES

Article 269 which deals with the taxes levied and collected by the union but assigned to the states elucidates:

[31] (2007) 7 SCC 527: AIR 2007 SC 2990

269. Taxes levied and collected by the Union but assigned to the States-[32][(1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Explanation.—For the purposes of this clause,—

(*a*) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(*b*) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.]

[33][(3) Parliament may by law formulate principles for determining when a [sale or purchase of, or consignment of,[34] goods] takes place in the course of inter-State trade or commerce.]

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[32] Substituted for the constitution (8th Amendment) Act, 2002, S.2

[33] Ins. By the constitution (6th Amendment) Act 1956, S.3

A law, which though purporting to impose tax on the price at which raw materials are purchased, actually becomes effective with reference to manufactured goods on their dispatch to a place outside the states, is a consignment tax falling within the competence of Parliament under Article 269(r)(g) and union list, Entry 92-B[35]. By reason of the new Entry 92-B inserted by the constitution (46th Amendment) Act, 1982, it has been held that when a tax is imposed by a state on the near dispatch of goods by a ,manufacturer to his own branches outside the state, the taxes are ultra virus because it is a consignment tax within the exclusive competence of Parliament under Entry 92-B of list I.

TAXES LEVIED AND DISTRIBUTED BETWEEN THE UNION AND THE STATES:

Article 270 elaborates that the taxes and duties referred in Union List, surcharges and cess collected by the union shall be shared and distributed between Union and state. It states:

[36]**270.** Taxes levied and distributed between -the Union and the States-(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in

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[34] Ins. By the constitution (46th Amendment) Act 1982 S.2

[35] Goodyear India Ltd v. State of Haryana, (1990) 2 SCC 71: AIR 1990 SC 781

[36] Substituted by the constitution (80th Amendment) Act, 2000, S.3 and deemed to have been substituted w.e.f 1-4-1996

articles 268[37] (268-A)and 269], respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means,—

(*i*) until a Finance Commission has been constituted, prescribed by the President by order, and

(*ii*) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.]

This divisible pool does not form part of the consolidated fund of India. The percentage, as may be prescribed of the net proceeds, is to be distributed amongst the states. Prescribed here means prescribed by the commission. Article 270 shows that the income tax attributable to union territory form part of Consolidated fund of India. It was stated in **T.N Kanniyan v. ITO,**[38] that it is not necessary to make any

[37] Ins. By the constitution (88th Amendment) Act 2003, S.3

[38] AIR 1968 SC 637 : (1968) 2 SCR 103

distribution of income tax with respect to union territories are centrally administered through the President. Corporation tax, however, is not liable to be shared.[39]

Parliament may increase any duties and taxes under article 269 and 270 by surcharge and the whole proceeds of such surcharge shall form part of Consolidated Fund of India as per the provisions of Article 271 which states:

271. Surcharge on certain duties and taxes for purposes of the Union.- Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

TAXES ON PROFESSION TRADE CALLING AND EMPLOYMENTS.

Article 276 empowers the states to impose taxes on profession, trades, callings and employments for the benefits of the states or of a municipality, district board, local boards or other local authorities.

276. Taxes on professions, trades, callings and employments.- (1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local

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[39] ITO v. T.S Devinatha Nadar, AIR 1968 SC 623: (1968) 2 SCR 33

authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed [40][two thousand and five hundred rupees] per annum.

[41]2* * * *

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

The issue arising in the **Tax Practitioners case**[42], concerned the competence of Parliament to levy service tax on practising chartered accountant and architects having regard to seventh schedule, list II, Entry 60 and Article 276 of the Constitution. Dismissing the appeal, it was stated by the court that broadly "service" fall into two categories, namely, property based services and performance based services. Property based services cover service providers, such as architects, interior designers, real estate agents, construction services, mandap walas, etc. performance based services

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[40] Subs for "two hundred and fifty rupees" by the Constitution (60th Amendment) Act 1988, S.2

[41] omitted

[42] (2007) 7 SCC 527: AIR 2007 SC 2990

are services provided by service providers like stockbrokers, practising chartered accountants, practising cost accountants, security agencies, tour operators, event managers, travel agents, etc. service tax is an indirect tax levied on certain services provided by certain categories of persons including companies, associations, firms, body of individuals, etc. the service sector contributes about 64 per cent to gross domestic product (GDP). “Services” constitute a heterogeneous spectrum of economic activities and has become an industry by itself, being synonymous with the advancement of economy. Therefore, the concept of value added tax is not a charge on the business but on the consumer.

PROCEDURE

Article 274 deals with the procedure required for bills affecting taxation in which states are interested. It states

274. Prior recommendation of President required to Bills affecting taxation in which States are interested.- (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression “agricultural income” as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression “tax or duty in which States are interested” means—

(*a*) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or

(*b*) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

Article 274 states, inter alia, that no Bill or amendment is to be introduced or moved in either House of Parliament except on the recommendation of the President, which may impose or vary tax or duty in which states are interested, vary the accepted meaning of the expression "agriculture income", affect the principles on which moneys may be distributed to States or impose any Union surcharge.

GRANTS

Grants are the means by which revenue is transferred from the centre to state. The grants provided may be categorised as follows.

GRANTS-IN-LIEU

Under article 273, provision has been made for grants-in-lieu:

273. Grants in lieu of export duty on jute and jute products-(1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar [43](odisha), Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.

[43] Substituted for "Orissa" by Act 15 of 2011, S.5

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in article 270.

The above provisions have been made for grants-in-lieu of export duty on jute and jute products by Centre to the states of Assam, Bihar, Orissa and west Bengal. The sum charged on Consolidated Fund of India continues so long as any export duty continues or until expiration of 10 years from the commencement of the constitution, whichever is earlier.

FISCAL GRANTS

Parliament under Article 275 is authorised to provide grants-in-aid. It states:

275.- Grants from the Union to certain States-(1) Such sums as Parliament may by law provide nshall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose

of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

(*a*) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in [44][Part I] of the table appended to paragraph 20 of the Sixth Schedule; and

(*b*) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

[45][(1A) On and from the formation of the autonomous State under article 244A,—

(*i*) any sums payable under clause (*a*) of the second proviso to clause (1) shall, if the autonomous State comprises all the tribal areas referred to therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify;

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[44] Substituted by the north-eastern Areas (reorganisation) Act, 1971, S.71, for "Part A"

[45] Ins by the constitution (22nd Amendment) Act 1969, S.3

(*ii*) there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of administration of that State to that of the administration of the rest of the State of Assam.]

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament:

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

These fiscal grants are provided by law to such states as it determines to be in need of assistance. Different sums may be fixed for different states by the President on the recommendation of the Finance Commission,

SPECIFIC PURPOSE GRANTS

These grants are also given under Article 275 to

1. meet development schemes undertaken which are approved by the Central Government;

2. promote welfare of schedule tribe or for raising level of administration of Schedule areas in the States; and
3. administration of State of Assam and any other autonomous state as specified by the President.

SAVINGS

Savings provisions are given under Article 277 which states:

277. Savings.- Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may,
notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

These provisions save the authority of the state to levy taxes on subject now forming part of the Union List immediately before the commencement of the Constitution. **In Adhyaksha mathur Babu's Sakti Oushadhalaya Dacca (P) Ltd. v. Union of India,**[46] it was held that the taxes, which are being levied by a state or a municipality or other local authority notwithstanding that those taxes are mentioned in the union

[46] AIR 1963 SC 622 (1963) 3 SCR 957

List, continue to be levied by those authorities until Parliament by law makes contrary provision. Article 277 does not extend to taxes levied under a law passed after the Constitution came into force.

Chapter 5

Finance Commission.-

Article 280 and 281 0f the constitution deal with the finance commission.

Constitution laid provisions with respect to taxation sharing between Union and States and grants to be given. However, visualising changes in the socio-economic and financial conditions of the country, the constitution makers desisted from lying down the rigid formula relating to finances. The experience of certain other federal countries like Canada and Australia also proved that if any financial position were made, they soon became inadequate due to changes in the economy. Therefore, a concept of financial commission on Australia model was developed, on whose recommendations the president would take decisions. Article 280 therefore provided for the appointment of a finance commission by the president every five years. It states

280 finance commission-(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

(*a*) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(*b*) the principles which should govern the grants in- aid of the revenues of the States out of the Consolidated Fund of India;

[47] [(*bb*) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;]

[(*c*) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;]

[(*d*)] any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

COMPOSITION

The commission consists of a Chairman and four other members to be appointed by the president with qualifications as laid down in a law by Parliament. Accordingly the Finance Commission Act 1951 has been enacted by Parliament. Its Chairman is to be a person having experience in public affairs. Its other four members are to be selected from among persons qualified to be appointed as the High Court judges, having

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[47] Ins by the constitution (73rd Amendment) Act, 1992, S.3.

special knowledge of government finance matters and administration, or having special knowledge of economics.

DUTIES

The duties of Finance Commission have been laid down under Article 280 (3) of the Constitution. These are to make recommendations on

1. The distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
2. The principles which should govern the grantsin- aid of the revenues of the States out of the Consolidated Fund of India;
3. The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State
4. The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State
5. Any other matter referred to the Commission by the President in the interests of sound finance.

PROCEDURE

Article 280 (4) provides that the Commission is to determine its procedure and is to have such powers as Parliament may by law confer on it. According to Finance

Commission Act, 1951 it has all the powers of a civil court for summoning the witnesses, requiring production any document, requiring any person to furnish information on any point which the commission regards as useful or relevant to any matter under its consideration. Article 281 lays down that the President shall cause every recommendations made by the Finance Commission, together with an explanatory memorandum as to the action taken thereon, to be laid before each House of Parliament

IMMUNITY OF INSTRUMENTALITY

In a federation, where there is division of power, one unit may exercise its power in such a way as to interfere or innihilate the other unit. Though safeguards were laid down in all the federal Constitution yet, through judicial innovations, doctrine of immunity of instrumentalities or intergovernmental immunity was propounded in a famous American case**, McCulloch v. Maryland**[48]

In this case, it was held that states have no power by taxation or otherwise to retard, impede or burden, the power vested in the general government. Similarly, decisions were given in **Collector v. Day**[49] to protect State instrumentalities from Central taxation.

In India this doctrine is not taken in broader sense that what is envisaged in Article 285, 287 to 289. Under these articles, it can be said, this doctrine is interpreted.

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[48] L Ed 579: US 316 (1819)
[49]20 L Ed 122: 78 US 113 (1870).

EXEMPTION OF PROPERTY OF THE UNION FROM STATE TAXATION

Article 285 debars a State from taxing property of the Union, “property” used in general sense meaning all kinds of property-movable, immovable, intangible and intangible. Article 285 (2) provides continuity, if taxes were levied on Central property, immediately prior to the commencement of the constitution. Also Article 287 prohibits a State from imposing tax on consumption or sale of electricity supplied to the government of India or utilised for construction, maintenance or operation of any Railway, unless it is otherwise provided by Parliament. This immunity, however, does not apply to incorporated companies in which that government has controlling interest.

It was held in **Western Coalfields ltd v Area Development**[50] authority that government companies like Hindustan steel Pvt. Ltd and Sindri Fertilizer and chemicals Ltd or public corporation, would not be immune from State taxation, even when the entire share capital of a company is subscribed by the central Government, it does not mean that the company is owned by the government. Jurisdiction, a company incorporated under the Companies act, 1956 has a separate corporate not be immune from municipal taxes. A municipality can levy tax on lands and building owned by such a company.

[50] (1982) I SCC 125: AIR 1982 SC 697.

Under article 288, exemption from taxation by states has been granted in respect of water, electricity or for regulating or developing Inter-State River or river valley. Tax may be imposed, if law imposing such tax has received the assent of the president.

EXEMPTION OF PROPERTY AND INCOME OF STATE FROM UNION TAXATION

Article 289(1) limits the taxing power of union by exempting from purview, the state property and income. However, under article 289 (2), the business operation of State, State property used or occupied for trade or business, or income accruing there from may be taxed, if parliament so provides. The principles underlying article 285(1) also apply mutatis mutandis to the taxation of State property by the union subject to one difference namely, where the union property devoted to commercial function is exempted from state taxation, such state property is not so exempted from union taxation.

PRIVY PURSES

Prior to the constitution act 1971, article 291 provides that where under any covenant or agreement entered into by the ruler of any Indian State before the Commencement of the constitution the payment of any sums, free of tax was guaranteed or assured by the Government of the dominion of India to any ruler of such state as privy purse.

Such sums shall be charged on, and paid out of, the consolidated Fund of India and

The sums so paid to any ruler shall be exempt from all taxes on income

Article 291 has now been repealed by the constitution Act, 1971

BORROWING

Article 292 deals with the power of the Union to borrow, whereas Article 293 deals with borrowing by States.

POWER OF UNION TO BORROW

Article 292 of the constitution deals with the powers of the Union to borrow. It states:

Borrowing by the government of India- The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

POWER OF STATES TO BORROW

Article 293 (I) states

293 Borrowing by states - Subject to the provisions of this article, the
executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

POWER OF UNION TO MAKE LOANS

Article 293 (2) provides for power of Union to make loans. It envisages

293 Borrowing by states-

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

POWER OF STATES TO RAISE LOANS

The power of States to raise loans is provided under Article 293 (3) which runs as

293 Borrowing by states

(3) A State may not without the consent of the Government of India raise any loan if there is still Outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

Article 293 (4) states

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

CENTRE-STATE RELATIONS- AN EVOLUTION.

The main characteristics of a federal constitution is the distribution of powers between the general and the regional governments. According to Prof. Wheare, the federal principle means "the method of dividing powers so that then general and the regional governments are each within a sphere, coordinate and independent." This means that there should be autonomy for the constituents units. The Indian constitution contains an elaborate scheme of distribution of powers. But from the scheme of the distribution of powers between the Centre and the states it appears that the framers have opted for a stronger Centre. The reasons for this are obvious. Arts 245, 246 contain the scheme of distribution of legislative powers. There are three lists, the Union List, the state list and the concurrent List. The residuary powers are vested in the union list, the state list and the concurrent list. The residuary powers are vested in the union. On a subject in the concurrent list both the centre and the states have power to make laws, but in case of conflict between the two, the law made by the centre shall in the end prevail upon the state's law. Under Arts. 249, 250, 252, 253 and 356, the Union Parliament is empowered to legislate on any matter in the state list.

Article 256 to 263 provide for the union control over states even in normal times through various ways. The centre has power to give directions to the states as to the manner in which they shall exercise their executive powers. The constitution provides coercive sanction for the enforcement of the directions through art. 356. Thus we find that the state Government are not even in their own sphere independent. This is a very substantive limitation on the autonomy of the states. The control of the Centre over

the states is also evident in the scheme of distribution of revenues. The sources of income of the centre are more than that of the states. While the responsibilities of the states in the welfare state are manifold. They are responsible for the well being of the citizens. For this purpose, they need sufficient funds. It is true that the states are assigned a considerable amount of income from taxes levied by the union. But they are dependent on the Union in this matter. The shares in taxes are given to the states on the recommendations of the finance commission. This is not statutory body. It has been created by the resolution of the government of India. A large part of the central assistance to the states are given on the recommendations of the planning Commission which is a quasi-political body. These grants are discretionary. Out of the total grants made in a year to the states in any year only 30 percent is under the purview of the finance commission and the remaining 70 percent is discretionary grant given to the states on the advice of the planning commission. The financial adjustments between the Union and the states must be studied in the context with the underlying principle accepted by the constitution viz, the central control for consolidating and strengthening the unity of India. This tendency towards centralisation in the distribution of revenues is seen in modern days practically in all federations. The ultimate responsibility for the welfare of the country rests on the Centre.[51]

[51] T.K. Tope, constitutional Law of India, page 545 (1982 edition)

SARKARI COMMISSION RECOMMENDATIONS ON FINANCIAL RELATIONS

The congress Government headed by Mrs. Indira Gandhi, appointed the Sarkaria Commission to review the centre State relationship and recommend changes in the existing set-up if necessary. The only limitation on the commission's term of inquiry was that, in making its recommendations, the commission was expected to ensure that they were within the constitutional provisions which safeguard the independence, unity and integrity of the country.

The commission submitted its report to the Government. Its has rejected the demand for curtailing the powers of the Centre saying that a strong Centre is necessary to preserve the unity and integrity of the country. The commission's view is that there is no need for the drastic changes in the existing provisions of the constitution. In its view the fundamental provisions of the Constitution have done reasonably well and withstood the stresses and strains of heterogeneous society in throes of change.

In financial sphere also, the commission has not suggested for major changes in the basic scheme of the constitution. It has, however, favoured amendments to provide for sharing of corporation tax, and levy of consignment tax on advertisement and broadcasting.

The commission is also of the view that the supremacy of Parliament envisaged in articles 246 and 254 is essential and needs no change. The only suggestion given in

this respect is that residual matters other than taxation should be in the Concurrent list.

The various suggestions asking for transfer of subjects to the state or concurrent list have been rejected. The commission has, however, suggested that there should be consultation by the centre on all concurrent subjects before passing any law.

The commission made out a strong case for inter-state-councils under art. 263. The recommendations of the Sarkaria Commission are well balanced and in accordance with the spirit underlying the various provisions of the Constitution for ensuring unity and the integrity of the country. A week Centre is likely to result in weakening the nation. A week nation either becomes a target of foreign attack or invites chaos in the country. This is evident from its past history as well as from present secessionist tendencies. The framers rightly tried their best top bring about a compromise between the demands of a strong Centre and the aspirations of the States for more power.

Chapter 6

CONCLUSION

Financial relations are the most important aspect of Centre-State relations. No system of federation can be successful unless both the Union and the States have at their disposal adequate financial resources to enable them to discharge their respective responsibilities under the Constitution. The primary factor that should govern the centre state relations is the avoidance of conflict as far as possible and the utilization of the machinery provided by the constitution for resolving differences that may arise either between the states or between the centre and the states. If this is so followed, there should be only a few occasions for crisis in Centre-State relations. While the centre has the duty to adopt a broad, imaginative and sympathetic approach to the needs and aspirations of the states, without regard to political considerations, the latter have a responsibility to co-operate with the centre and accept its leadership on major questions of natural policies. The preamble to our constitution declares that the objective of the Indian Democratic Republic is “to secure all its citizens: justice – social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all fraternity assuring the dignity of the individual and unity of the nation”. The entire political structure embodied in the constitution is designed to achieve this magnificent aims. It should be realized that the basic entities mentioned in the Preamble are “the individual” and “the nation”. In between them, we have the hierarchy of political

authorities which must function in conformity with the provisions of the constitution for realizing the objectives set forth in the Preamble. It is the duty of the Central and State legislatures and the governments to function in such a way that they assure the "dignity of the individual and the unity of the nation". Cooperation, not confrontation is the watchword for everyone in authority.

Chapter 7

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