

IS INDIAN CONSTITUTION FEDERAL?

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The Sovereign Democratic Republic of India was born on 26th January 1950. It was on this day, that the Constitution of India, that is Bharat, came into force, though it was adopted and enacted on 26th November 1949. On the day of this adoption of the Constitution, part of it regarding citizenship, Election Commission and some other provisions of a temporary and transitional nature, came into effect. In the present article an attempt is made to examine the nature of this new Constitution.

Political science has divided Governments into unitary and federal. This division is made on the basis of the exercise of sovereign power. Prof. Dicey says, "If the system of Government is based on unitarism, i.e. the habitual exercise of supreme legislative authority by one central power, then it is a unitary Government." U. K. and South Africa have unitary Governments. If, on the other hand, the Supreme Legislative authority is exercised by more than one body, then a Federal Government arises like that of U. S. A. or Australia. Thus the distinction between the two types of Governments lies in the division of powers. In a Unitary Government legally only one body is Supreme. There is one reservoir of all power. There is concentration of power; while in case of a Federal Government there is division of power.

It may be asked how does this phenomenon of the existence of several authorities together occur? Under certain circumstances a body of States having certain affinities form themselves into an association or union. There are three classes of unions of States, viz. Personal Unions, Real Unions and Federal Unions. Personal Unions: They arise where two States are ruled by the same prince. The two States do not lose their individuality and are regarded as different corporations in international law. The sovereignty of each State remains isolated, e.g. Union of Great Britain and Hanover during the reign of Hanovers over England, between 1714-1837. In Real Unions the associate States retain their internal Sovereignty but merge their external Sovereignty, e.g. England and Scotland were in a Real Union from 1603 to 1707. The Austro-Hungarian Empire from 1867 to 1918 is an instance of Real Union.

What is then a Federal Union? Before that let us see how many Federal Unions are functioning in the World today. "There are now nine Federal States in the World, all of which except Switzerland and Russian Soviet Federal Socialistic Republic, have been more or less directly modelled on that of the United States of America."

(Sir J. A. R. Marriat, "Federalism and the Problem of the small State.") There are six Federations on the American Soil: U. S. A. (1787) and Canada (1867) in North America. Four Federations are in South America among the Latin American States, Brazil (1891), Argentine (1853), Mexico (1857) and Venezuela (1936). The Three Non-American Federations are: Switzerland (1848), Australia (1900) and U. S. S. R. (1936). The Weimar Constitution of 1919-1933 which operated in Germany is a notable defunct federation. Out of the nine only three are from the English-speaking world: U. S. A., Canada and Australia. There was no federation exclusively on the Asiatic Soil so far.

Federal Union arises out of an association of States. There are three principles of association of States: Devolutionary, Confederal and Federal. In the devolutionary principle, the States are subordinate to the Central Government, e.g. Ex-British India. It may be noted that the instrument by which the Government of India gave legislative powers to the provinces in 1921 was called the Devolutionary Rules. "This was under the Government of India Act, 1919. (See Simon Report Vol. I, P. 126). In the confederal principle, the Central Government is dependent upon the regional government. The Association of States on this principle is called a Confederation, e.g. Swiss Confederation created by the pact of 1291; or American Confederation of 1877. The late lamented League of Nations was also formed on this principle. The third principle of association of States is the federal principle where general and regional governments are of co-ordinate authority within their demarcated spheres, e.g. U. S. A. and Australia.

The question what is a Federal Union or Federation may be examined in some detail. Etymologically the word is derived from Latin *foedus*, meaning a treaty. The history of federations also supports this derivation as all federations are found to be grounded on a treaty, covenant or pact.

According to Prof. Dicey, "A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of state rights." The definition lays stress on the aim of federation which is to accommodate the associating States desiring union but not unity or merger. This is achieved by division of powers between the general and regional governments so as to demarcate their spheres of governmental activity.

Another view is that the essence of federalism lies in keeping the residue of powers with the States as it is the States from whom power flows and a portion of which they surrender voluntarily to the general government. Now in Canada the residue is with the Centre while in Australia it is with the Provinces. But really speaking, the question of residuary powers though important, is not fundamental.

Bryce in his "Studies in History and Jurisprudence" (Vol. 1) has defined the federal principle by saying that in a federal government both general and regional governments operate directly upon the people, whereas in a league or confederation it is the regional or State governments alone which operate directly upon the people; the general government operates only upon the regional governments. This definition sums up the difference between the American Confederation of 1777 and the American Federation of 1887. The three authors of the "Federalist" emphasize this difference. By the way, the "Federalist" is a collection of 85 essays which constitute an illuminating commentary upon the American Constitution. These essays were contributed by Alexander Hamilton, an eminent lawyer of New York, John Jay, who came later on to be the first Chief Justice of the United States and James Madison, described as the architect of the American Constitution. Bryce's definition distinguishes a federation from a confederation, but not a decentralized system of government like South Africa from that of U. S. A. In South Africa the Union and Provincial Governments operate directly upon the people as in the case of U. S. A. The real difference is that in South Africa the regional governments are subordinate to the Union government and in the U. S. A. they are co-ordinate with the general government.

A judicial test of federation is found to be laid down by Lord Haldane in the case "Attorney-General for the Commonwealth of Australia vs. Colonial Sugar Refining Company Ltd." (1914) A. C. 237, at pp. 252-254. The word "federal" meant in its application to cases in which States, while agreeing on a measure of delegation of their powers to a common government, yet in the main continue to preserve their original Constitutions. Applying this test, Lord Haldane held that Canada was not a true federation as the British North America Act, 1867, created new provincial governments. According to him U. S. A. and Australia were truly federal. Prof. Wheare of Oxford in his book "Federal Government" has commented on this view; says he, "This criterion of the federal principle misses one important point. The important point is whether the powers of government are divided between co-ordinate, independent authorities or not."

Prof. A. P. Newton holds that "Federation is a permanent association of States which have resigned a portion of their sovereignty into the hands of a common authority while States retain some part of their sovereign power." This definition underlines the division of powers in a Federal Constitution, but misses the important point of Prof. Wheare.

According to Prof. Wheare, by the federal principle is meant "the method of dividing powers so that the general and regional governments

are each, within a sphere, co-ordinate and independent." In the deduction of the above federal principle, Prof. Wheare is fortified by an authority like Freeman who calls it "Federal Ideal" i.e. the "complete division of sovereignty." "The government of the federation and the government of the state have a co-ordinate authority, each equally claiming allegiance within its own range." (See Freeman's "History of Federal Government in Greece and Italy").

(On a review of the above tests and definitions, it is submitted, the true position appears to be this. A Federation is rooted in a pact, entered into by a body of States. The pact or covenant contains a division of powers between the general and regional governments, with the residuary powers left either with the general or regional governments. Further, last but not the least, in the exercise of the powers so divided, the general and regional governments are each, within their own spheres, co-ordinate and independent.

Incidentally the best definition of Federation which succinctly expresses the true idea of the federal form of government appears to be that of Sir Robert Garren quoted in the Report of the Royal Commission on the Australian Constitution (1929), which runs thus; "A form of government in which sovereignty or political power is divided between the central and the local governments, so that each of them within its own sphere is independent of the other" (p. 230).

Thus the Constitution which is based on this federal principle can be regarded as a Federal Constitution. Now let us turn to the Constitution of India and examine its nature in the light of this Federal Principle.

(It is claimed that Indian Constitution is federal in normal times and unitary in times of emergency. Like the American Constitution the word 'federation' or 'federal' does not find place in the Constitution of India, including its Preamble. The objective enunciated in the Preamble is to constitute India into a Sovereign Democratic Republic. In contrast it may be noted that the Constitution of Canada starts with an express desire of the provinces "to be federally united into one Dominion under the Crown". The Commonwealth of Australia Constitution Act, 1900 also commences its preamble with the words "Whereas the people of have agreed to unite in one indissoluble Federal Commonwealth." It is submitted that the framers of the Indian Constitution have purposely refrained from any such declaration as to the form of government they propose to set up.

A study of the background is necessary to appreciate a picture. So before launching upon an examination of the nature of the new Constitu-

tion, it is instructive to see its background. The Government of India Act, 1935 sought to introduce a Federation in British India. By virtue of Sec. 5 of the Act, "His Majesty" was empowered to issue a proclamation that India was to be "united in a Federation under the crown, by the name of the Federation of India." It was to be a Federation of Indian Provinces and States which may accede. The terminology used in the Act expressly mentions "Federal Assembly" and such other federal institutions. Not only that, but the "Federal Court," the "Federal Railway Authority" and the "Federal Public Service Commission" had started functioning prematurely. It is well-known that the Federation envisaged by the Act never materialised. Thus since 1935 India had a few federal institutions at least in name—without a federation before the commencement of the present Constitution, while paradoxically enough, it may be thought, that under the new Constitution we have no institution labelled as 'federal' yet the claim is that we have a federal Constitution in India.

(There are three well-recognized leading characteristics of a Federal Constitution: (1) Supremacy of the Constitution (2) Distribution of powers among bodies with limited and co-ordinate authority (3) The authority of the Courts to act as interpreters of the Constitution. These are indispensable essentials of a Federal Constitution.)

Let us apply these tests to the Indian Constitution. The Constitution of India is paramount as it has no superior over-riding authority. There is no tribunal which has power to sit in judgment upon its validity as its sanction is derived from "We, the People of India." In the Constitution of the United States of America, Art. IV (2) clearly mentions that "This Constitution shall be the Supreme Law of the land." There is no such express statement in the Indian Constitution. But the Canadian and Australian Constitutions are also silent on this point, and they are none the less federal. The principle of the supremacy of the Constitution is recognized in the Constitution of India itself. Two illustrations may suffice to make the point clear. Firstly, a full play of this principle is seen in Art. 13 (1), (2) which declare all laws inconsistent with or in derogation of the fundamental rights as laid down in Part III of the Constitution to be void. Secondly, the form of oath or affirmation for the President (Art. 60) also illustrates this principle. The form of oath contains these words "to the best of my ability preserve, protect and defend the Constitution." The forms of oaths or affirmations prescribed for Ministers etc. as laid down in Schedule three also reveal this principle. Thus the Constitution has taken the place of "His Majesty" under the British Rule. There was nothing above the "Emperor of India." There is nothing above the Constitution of India.

The most salient feature of a federation is the distribution of powers. This results from the peculiar historical nature of Federation. From its very nature federalism requires a division of sovereign power among a number of co-ordinate bodies. This is secured by listing the powers of the general and regional governments. This delimitation or pinning down of powers is done under the Constitution by making lists of powers to be exercised exclusively or concurrently. A concurrent jurisdiction is not, it may be pointed out here, incompatible with the federal principle. It is found in all federal governments.

In the Indian Constitution the division of powers between the Union and States is effected by three lists (Art. 246) set out in the Seventh Schedule. List I consists of 97 items under the exclusive jurisdiction of the Union called as Union List. List II ranging over 66 items of exclusive State legislation is called State List. List III is a concurrent list covering 47 matters. The territorial legislative limits of the Union and the States are fixed by Art. 245. Parliament can make laws for the whole or part of India. It has also extra-territorial jurisdiction, while the legislative ambit of the States extends to the whole or part of the State in question only. The executive powers are co-extensive with the legislative powers. Art. 73 sets out the extent of the executive powers of the Union, with a special provision extending it beyond its legislative powers in the matter of certain rights, authority and jurisdiction which are to be exercisable by the Government of India by virtue of any treaty or agreement. This clearly refers, it is submitted, to the legacy of paramountcy which having lapsed after the Indian Independence Act, had some of its relics which have been kept unimpaired in the form of treaties and agreements. Art. 363 sheds a good deal of light on this. It bars the interference by Courts in respect of disputes arising from certain treaties, agreements etc.

The extent of executive power of States is found in Art 162, which follows the principle of co-extension. However it is subject to a proviso viz. the executive power of the State shall be subject to and limited by the executive power expressly conferred by the Constitution or any law of the Parliament upon the Union or authority thereof.

A consideration of the distribution of powers between the Union and the States raises the important issue of the location of residuary powers. The problem arises because human genius necessarily falls short, in some measure, to anticipate the future. Hence inspite of 210 entries spread over three lists, Art. 248 has to provide for the exercise of the residuary powers of legislation. Under that Article Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concur-

rent List or State List. Under the Constitution of U. S. A. the residue is left to the States or the people (See Amendment X). Similarly in Australia and Switzerland the residue is with the Provinces and Cantons respectively. Like India, in Canada the residue is with the Dominion Government. There is a peculiar advantage in keeping the residue with the General Government. If any matter of general importance arises in future it should go under the control of the general government. Aviation is an instance in point. In U. S. A. and Australia general governments have no control over such vital matters except in virtue of defence and interstate commerce powers. In Switzerland the problem had to be solved by amendment of the Constitution in 1921, in order to allot the subject to the general government. Under Indian Constitution Aviation is a Union subject (See entries 29, 30 in Union List).

Thus we find that out of the second essential of Federation distribution of powers is found in the Indian Constitution. Now the further question whether the Union and States have co-ordinate and independent authority within their respective spheres, which is the most important part of the test, is proposed to be deferred for a while.

{ The third most important indispensable characteristic of a Federation is the existence of a Supreme Court to interpret the Constitution. The need for it arises this way. Division of powers being an essential aspect of a Federal Constitution, that division of powers must be definite and must be expressed in words by way of enumeration of powers spread over one, two or three lists. Now it is well-known that words have different meanings to different minds. Hence a necessity arises to settle the authoritative and uniform meaning of the words of the Constitution i.e. to interpret the Constitution. For this purpose an independent tribunal consisting of the cream of the men of law of the country is required and there is born the Supreme Court. It will be seen that this function of interpretation of the Constitution arises from division of powers, i.e. one of the indispensable characteristics of a federation. But there is another characteristic of a federation which is of equal moment. It is the supremacy of the Constitution i.e. the Constitution must prevail over all other laws; thus any other law of the land which is repugnant to the Constitution must be void. And it is the function of the Supreme Court to determine whether a law is void or valid, *ultra vires* or *intra vires*. This function of the Supreme Court is known in the United States as the theory of "Judicial Review."

The doctrine of Judicial Review was born in the United States and its father was the eminent American Chief Justice Marshall. Its first application is found in the case of *Marbury vs. Madison* (1803) in which

the Supreme Court of the United States nullified an Act of Congress. The doctrine is stated in a classical form by Marshall, C. J. in that leading opinion as follows :

“The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it If an act of the legislature, repugnant to the Constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that Courts, as well as other departments, are bound by that instrument.”

Unlike American Constitution, the function of interpretation of the Constitution by the Supreme Court is embodied in our Constitution itself, e.g. see Art. 132 (1), (2) and 133 (2). It is submitted that Art. 143 which empowers the President to seek the opinion of the Supreme Court on a matter of public importance, also recognizes this function of the Supreme Court. The Supreme Court is supreme in all senses of the term. Art. 141 lays down that the law declared by the Supreme Court shall be binding on all Courts in India, while Art. 144 enjoins all authorities, civil and judicial, in India to act in aid of the Supreme Court. It is submitted that the Indian Supreme Court has the power of Judicial Review on the reasoning of the American Chief Justice set out earlier. The security of tenure of the judges of the Supreme Court is safeguarded heavily under the Constitution. It is hoped that this will pave the way for the Supreme Court of free India to be developed into a custodian of the Constitution; for truly it may be said that Supreme Court is the conscience of the Constitution.

Some other conditions which are usually associated with a federation call for consideration. It must be understood, however, that they are not indispensable like the characteristics discussed above.

According to Sir J. A. R. Marriot there are three such conditions. The first is that “there must be a group of communities so united by blood or creed or language or political tradition as to desire union; but sufficiently tenacious of independence as to revolt against the idea of inclusion in a unitary State.” It means the body of associating States desires union and not unity. It is a question of reconciling the two sentiments to stand together and apart at the same time,

In India the problem was to accommodate the twin sentiments of national unity and provincial autonomy. In spite of the sub-continental nature of India, in spite of the variety of people that live in that sub-continent, it must be admitted that there has been a common feeling present among the people of India that they are Indians. But at the same time the provincial sentiment, which though playing a second fiddle to the national sentiment, is nevertheless present. The present form of government, it is submitted, has reconciled these two sentiments. In this connection the absence of recognition of dual citizenship as in the United States must be put on the credit side of the framers of the Constitution, for under our Constitution there is only sole citizenship of India. Another noteworthy feature of the Indian Constitution is that we have one official language only, unlike Canada which had to recognize both English and French as the languages of the Dominion (See Sec. 133). Now this condition is not indispensable, as Switzerland which though it defies this condition, is none the less a federation.

The second condition is that none of the States should be individually powerful enough to resist single-handed, foreign encroachments, and maintain its own independence. This is the compelling force in the federations of U. S. A. and Switzerland. In India this motive is dormant as the problem never arose since the advent of the British Rule and when it arose during the World Wars, India was part of the British Empire.

A third condition is that there ought to be the least possible inequality among the States. But as Marriot observes, it is a counsel of perfection. The device generally adopted to fulfil this condition is to give equal representation to the States in the Upper House or Senate, irrespective of their size or population. This is done in U. S. A. and Australia but not in Canada and India follows Canadian example. The composition of Indian Senate is found in Art. 80 read with Sch. IV. It consists of 250 members of which not more than 238 are to be representatives of States. But Sch. IV reveals that there is no equal representation to States. The highest representation goes to the United Provinces with 31 seats while States in Part C get one seat in common for two States in some cases. However this is not an indispensable condition of Federation. Incidentally it may be observed here that a Federal legislature must have an upper chamber. It is a guarantee of freedom. That is why Lord Acton said, "The federal system affords the basis for a second chamber which has been found the essential security for freedom in every genuine democracy."

Apart from these dispensable conditions, some more features are usually associated with a Federal Constitution which may be noted.

The first feature associated with a Federal Constitution is found in the Constitution of the U. S. A. and U. S. A. is regarded as a model federation. That feature is the doctrine of separation of powers based on the political philosophy of Montesquien. Perhaps the best statement of the doctrine is that found in Art. 30 of the Bill of Rights of the Constitution of Massachusetts (1780). "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them. The executive shall never exercise the legislative and judicial powers or either of them. The Judicial shall never exercise the legislative and executive powers or either of them, to the end that it may be a government of laws and not of men."

It is submitted, however, that the separation of powers is not essential to a federal government. Indeed, in a federal government the question is not whether the three organs of government have common persons to carry on the duties or exclusively different persons, but the question is one of clear-cut division of powers as between the general and regional governments. In India, there is no separation of powers, but a fusion of powers as in the United Kingdom.

Another feature of a federal constitution is that it is a written constitution. Federation is founded on a pact. It is based on compromise. As Edmond Burke remarked, "Magnanimity in politics is not seldom the truest Wisdom." The compromise between the federating states is recorded in a document. Thus a federal constitution is usually a written constitution. Indian Constitution is *unlike* that of United Kingdom a written constitution. The constitutions of the leading federations of the world are written constitutions.

The Constitution of India may be described as a compromise between the written Constitution of the U. S. A. and the unwritten Constitution of the United Kingdom. It borrows from both the constitutions, not to mention the Constitutions of Canada, Australia and other countries. Assimilation of existing knowledge is a kind of originality. The Indian Constitution combines the Presidential system of the U. S. A. with the responsible government obtained in English Constitution. Thus it seeks to remove the dangers of an irresponsible executive that beset the Constitution of U.S.A. It may be noted that the President of America appoints his ministers who are neither members of the Congress nor are they responsible to it. They are just departmental heads. But here is a Cabinet government with a President.

A third feature usually associated with a federal constitution is that it is rigid. Federal constitution, we have seen, is a written constitution

and a written constitution is regarded as a rigid constitution. The idea of rigidity of a Constitution is often contrasted with the flexibility or adaptability of the English Constitution. The real difference between a rigid and flexible constitution is, in the words of Lord Birkenhead, as follows : "The first point which requires consideration depends upon the distinction between constitutions the terms of which may be modified or repealed with no other formality than necessary in the case of other legislation and constitutions which can only be altered with some special formality and in some cases by a specially convened assembly." Judged by this test the leading federations of the world have rigid constitutions. But Indian Constitution is flexible. Under Art. 368 a simple machinery is provided to amend the Constitution. There is no special formality nor special convention as in France, required for amending the Indian Constitution. This flexibility of the Indian Constitution will go a long way in ensuring its success. Under other Federal Constitutions the rigidity of the Constitution has cast a great strain on their Courts. Attempts are made to get the Constitution 'changed' by liberal or even loose interpretation of the Constitution through the Supreme Court. This has happened in the U.S.A. where a tussle is going on between the general government and States to get the upper hand by means of favourable interpretations of the division of powers. The tendency of American decisions is to expand the powers of the general government. So is also the tendency in Australia. But in Canada it is the other way round, the benefit of interpretation having gone to strengthen the powers of the Provinces. It is too early to state what may happen in the case of India. But one thing is certain that due to the simple machinery of amendment, the Supreme Court, it is submitted, may not necessarily develop on the American lines.

At this stage we are left with an important point which, it is submitted, is the crucial instance, the quintessence of a federation. How far the federal principle viz. in the words of Prof. Wheare : "Are powers so divided as that the general and regional governments are each, within a sphere, co-ordinate and independent" is found present in the Constitution of India? Has it a full play or does it only predominate or is it an important principle in our Constitution? Are there any modifications or limitations of this principle found in Indian Constitution so as to negative or defeat its purpose? These are some of the questions to which we may address ourselves.

Critics of the Constitution refuse to recognize the Indian Constitution as federal principally on the following, among other grounds.

Firstly it is pointed out that the appointment of Governors of States by the President by a warrant under his hand and seal under Art. 155 constitutes a modification of the federal principle.

Under the Constitution of the United States of America a Governor of a State is elected by people. However in Canada the Lieutenant-Governor of a Province is to be appointed by the Governor-General (Sec. 58). Now the Canadian Governor-General himself is appointed by the King of England and it is in the capacity of a Crown Representative that he appoints the Lieutenant-Governors. In the case of India, however, the appointing authority is an elected President, a choice of the people themselves. This modification is justified further on the ground of convenience viz. to avoid elections of Governors by each State. Lastly, apart from the above reasons, this is a factor which supplies the link with the Union to make the country as one in times of emergency.

It is further contended that Art. 253 which empowers the Parliament to legislate for implementing any international agreement is in contravention of the federal principle. It is apprehended that here is a handle for the Union to impinge on the State field of legislation under the cloak and guise of giving effect to international agreements which are not seldom vague and too general. It is submitted that the article in question is no more than an elucidation of entry No. 15 in the Union List which reads simply, "War and Peace." If there is no objection to the inclusion of these subjects, viz. war and peace, which may be construed to cover everything from a pin to an elephant, we fail to see how possibly the objection in question can hold water. Further it may be noted that S. 132 under the Canadian Constitution is a similar one.

A third limitation on the federal principle which is objected to is that Art. 248 leaves the residuary powers to the Union. Now here we have good precedents in Canada again. Further the question of residuary powers is not material for the federal principle; for leaving the residue either with the Union or States is a matter of division of powers which is essential to federation. How it is to be done is a matter for the Constituent States to decide at the time of division of powers, and not a matter to make a grievance of after the division is agreed upon.

Another instance of dependence of the States on the Union Government is found in Art. 365. It provides that if a State fails to comply with or to give effect to any directions given in the exercise of the executive power of the Union under any of the provisions of the Constitution (e.g. Art. 256); the President is empowered to hold that a situation has arisen in which the government of the State cannot be carried on in

accordance with the provisions of the Constitution, as mentioned in Art. 356 and then the President can assume to himself all or any functions of the Government of the State. It may be noted that this is an emergency provision to which we are coming shortly.

Before that, one instance of the dependence of the Union on the States —note that here the dependence is other way round in that under Art. 80 (4) the representatives of the States to the Council of States are to be elected by the elected members of the Legislative Assemblies of the States. This is none the less an exception to the federal principle of co-ordinate and independent authority. However the precedent was found in the Constitution of U.S.A. till 1913. In Switzerland also there is found such dependence in as much as the period of office, emoluments and method of election of the two representatives from each Canton of the Swiss Federation to the Council of States is to be determined by the cantons.

The sixth and the last breach of the federal principle as pointed out is the "Emergency" provisions contained in Arts. 352 to 360. This may be described as the gravamen of the charge that the present Indian Constitution is not federal. In his speech in the Constituent Assembly delivered on 25th November 1949, Dr. Ambedkar, the architect of Indian Constitution, has answered this charge by a simple plea of guilty. The Law Member has given his reasons for the same. Thus four out of six modifications of the federal principle are covered with precedents from leading federations of the world. It may be recalled that for the appointment of Governors, for international treaties and for leaving residuary powers to the Union, we have the Canadian precedents. For the indirect election to the Council of States we have ex-U.S.A. (upto 1913) and Swiss precedents. The remaining two modifications of the federal principle as contained in Art. 355 and Arts. 352 to 360, are of an emergency nature admittedly.

After a masterly survey of the federations of the world Prof. Wheare has pointed out that the four forces of war, economic depression, social services and mechanical revolution have been the chief causes for the growth of central powers in federal States.

In this connexion two articles throw a good deal of light on the modern tendencies and problems before the federations.

The first of the two is an article "Federation in Peace and War" by Sir Alladi Krishna-Swami Aiyar which appeared in the Indian Law Review (Vol. I, 1947). Therein he has pointed out that "At a time when a simple rural economy governed the lives of people and when the life of a common man was not very much affected by the problems of inter-

national trade, currency, tariff policies, labour conditions in different parts of the country, the allocation and demarcation of governmental functions, legislative and executive, were comparatively an easy affair. But the task is rendered much more difficult owing to the play of economic and political forces in the modern world". He adds further that "It is no exaggeration to say that the U. S. A. is moving swiftly towards a unified economic and social system, co-extensive with its territory."

This main tendency towards centralization among the federations under the stress of modern conditions is scrutinized by Prof. Friedmann in an article entitled "Federal Constitutions and Social Planning" (The "Political Quarterly" Jan.—March 1949). According to him, "Everywhere, increasing needs of central planning have come up against major constitutional obstacles or more precisely against psychological and political obstacles which have their origin in the federal constitution."

It is submitted that some of the provisions of Indian Constitution are justifiable in view of the needs felt by other federations. Art. 249 empowering Parliament to legislate with respect to a matter in the State List in the national interest, is a provision of this kind.

Coming to the principal inquiry undertaken by this article, let us consider what is the effect of the six limitations or modifications of the federal principle and whether notwithstanding them, the Constitution of India can be described as federal.

As it is pointed out, there are exceptions to the federal principle found in other federations. The first three limitations are found in the Canadian Constitution too. Prof. Wheare describes Canada as a quasi-federation. The modification regarding indirect election to the federal upper chamber is not so material according to him. He further distinguishes between a federal constitution and a federal government, and concludes that Canada has a quasi-federal constitution but a federal government in practice. Indian Constitution is a quasi-federal constitution, it may be concluded on the strength of Prof. Wheare's reasoning. It is too early to predict what Indian government in working is going to be. It may be borne in mind that Prof. Wheare has taken a very strict view as a political scientist when he calls Canada a quasi-federation. But as law is a science we must follow the strict principles.

Then the emergency provisions are so framed as to convert India into a unitary state in times of grave emergency whereby the security of India or any part thereof is threatened by war or external aggression or internal disturbance (See Art. 352 (1)),

Thus the claim advanced for the Constitution that it is federal in normal times and unitary in times of emergency is fully justified with one modification—according to strict political theory—that the Constitution of India is quasi-federal.

Federal governments are usually open to the charges of being too expensive, legalistic, conservative and weak governments. Under the Indian Constitution the federal government is made strong in emergency times ; hence the last charge cannot be sustained. The defect of conservatism is cured by making the Constitution flexible by providing for a simple machinery for amending the Constitution. As regards the charge of being legalistic, it is inherent in federation and a sort of an inseparable concomitant of federal constitution. However the easy process of amendment may check the tendency towards too much legalism. Lastly, Federal Government is found to be too expensive. Now if you want a good political machinery to satisfy your political wants, you must pay for it, even through your nose, if necessary.

One thing is certain. Here is a great experiment in federation, last word on which is yet to come. It is essentially a product of our own times. But it must be remembered that after all, a constitution is a means to end and not an end in itself. But good means properly employed bring about good results. Hence in the words of Art. 60 of the Constitution of India, let us all, "to the best of our ability preserve, protect and defend the Constitution."
